ITEM NO.24 COURT NO.12 SECTION XVII-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 3359/2026

ORBIS TRUSTEESHIP SERVICES PRIVATE LIMITED & ANR. Appellant(s)

VERSUS

HARVINDER SINGH SIKKA & ORS. Respondent(s)

(IA No. 79581/2026 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 23-03-2026 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR
HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Appellant(s) Mr. Shyam Divan, Sr. Adv.
Mr. S. Nirajan Reddy, Sr. Adv.
Mr. Tushar Singh, AOR
Ms. Palak Arora, Adv.
Ms. Akshra Arshi, Adv.
Mr. Adith Deshmukh, Adv.

For Respondent(s) Mr. Maninder Singh, Sr. Adv.
Ms. Neeha Nagpal, Adv.
Mr. Malak Manish Bhatt, AOR
Mr. Vivek Kumar, Adv.
Mr. Rohan Tewari, Adv.

Mr. Sumesh Dhawan, Adv.
Ms. Mallika Kamal, Adv.
Mr. Shivam Sharma, Adv.
Mr. Sagar Thakkar, Adv.
Ms. Kavya, Adv.
Mr. Lzafeer Ahmad B.F., AOR

Mr. Naman Singh Bagga, Adv.
Mr. Amar Virk, Adv.
Mr./Mr. Aditya Gauri, Adv.
Mr. Anant Jain, Adv.
Mr. Kashish Mathur, Adv.
Ms. Dimini Srestha, Adv.
Mr. Aryan Chhabra, Adv.
Mr. Akash Chatterjee, AOR

UPON hearing the counsel, the Court made the following

O R D E R

Issue notice, returnable on 18.05.2026.

Mr. Malak Manish Bhatt, learned counsel, and Mr. Akash Chatterjee, learned counsel, who are present in Court on advance notice/caveat, waive service and accept notice on behalf of respondent Nos. 1 and 2, respectively. Hence, notice need not be served on the said respondents.

Notice shall be served upon the unrepresented respondents by all modes, including *dasti.*

Counter affidavit/reply, if any, shall be filed within two weeks.

Rejoinder thereto, if any, may be filed within two weeks thereafter.

The impugned judgment/order dated 25.02.2026 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi, shall remain suspended till the next hearing.

(BABITA PANDEY)
AR-cum-PS

(PREETI SAXENA)
COURT MASTER (NSH)

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 256 of 2026

[Arising out of order dated 21.01.2026 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court – II) in C.P. (IB) No. 143/ND/2022 in New I.A.312/ND/2026]

IN THE MATTER OF:

Harvinder Singh Sikka **...Appellant**

Versus

Nobal Buildtech Pvt. Ltd.
Through the Interim Resolution Professional & Ors. **...Respondents**

Present:

For Appellant : **Mr. Abhijeet Sinha, Sr. Advocate & Mr. Sumant Batra, Sr. Advocates with Mr. Piyush Singh, Mr. Vivek Kumar, Ms. Raveena Paniker, Mr. Vijay Nair, Mr. Raghav Dembla, Ms. Neeha Nagpal and Mr. Rohan Tewari, Advocates.**

For Respondents : **Mr. Abhishek Anand, Mr. Amar Vivek, Mr. Aditya Gauri, Ms. Damini Srestha, Mr. Anant Jain and Mr. Aryan Chhabra and Mr. Hemant Sethi (RP in person) Advocates for R-1/RP.**

Mr. Gopal Jain, Sr. Advocate with Mr. Kevin Chadha, Advocates for R-2 & R-5.

Mr. Sumesh Dhawan, Ms. Meghna Mishra and Ms. Mallika Kamal, Advocates for R-3.

Mr. Krishnendu Dutta, Sr. Advocate with Ms. Palak Sharma, Advocates for R-4.

WITH

Company Appeal (AT) (Insolvency) No. 287 of 2026

[Arising out of order dated 13.01.2026 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court – II) in C.P. (IB) No. 143/ND/2022 in New I.A.112/ND/2026]

IN THE MATTER OF:

Harvinder Singh Sikka ...Appellant

Versus

Nobal Buildtech Pvt. Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate & Mr. Sumant Batra, Sr. Advocates with Mr. Piyush Singh, Mr. Vivek Kumar, Ms. Raveena Paniker, Mr. Vijay Nair, Mr. Raghav Dembla, Ms. Neeha Nagpal and Mr. Rohan Tewari, Advocates.

For Respondents : Mr. Abhishek Anand, Mr. Amar Vivek, Mr. Aditya Gauri, Ms. Damini Srestha, Mr. Anant Jain and Mr. Aryan Chhabra and Mr. Hemant Sethi (RP in person) Advocates for R-1/RP.

Mr. Gopal Jain, Sr. Advocate with Mr. Kevin Chadha, Advocates for R-2 & R-5.

Mr. Sumesh Dhawan, Ms. Meghna Mishra, Ms. Mallika Kamal and Mr. Shivam Sharan, Advocates for R-3.

Mr. Krishnendu Dutta, Sr. Advocate with Ms. Palak Sharma, Advocates for R-4.

WITH

Company Appeal (AT) (Insolvency) No. 288 of 2026

[Arising out of order dated 07.01.2026 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court – II) in C.P. (IB) No. 143/ND/2022 in RA 83/ND/2025]

IN THE MATTER OF:

Harvinder Singh Sikka ...Appellant

Versus

Nobal Buildtech Pvt. Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate & Mr. Sumant Batra, Sr. Advocates with Mr. Piyush Singh, Mr. Vivek Kumar, Ms. Raveena Paniker, Mr. Vijay

Nair, Mr. Raghav Dembla, Ms. Neeha Nagpal and Mr. Rohan Tewari, Advocates.

For Respondents : Mr. Abhishek Anand, Mr. Amar Vivek, Mr. Aditya Gauri, Ms. Damini Srestha, Mr. Anant Jain and Mr. Aryan Chhabra and Mr. Hemant Sethi (RP in person) Advocates for R-1/RP.

Mr. Gopal Jain, Sr. Advocate with Mr. Kevin Chadha, Advocates for R-2 & R-5.

Mr. Sumesh Dhawan, Ms. Meghna Mishra, Ms. Mallika Kamal and Mr. Shivam Sharan, Advocates for R-3.

Mr. Krishnendu Dutta, Sr. Advocate with Ms. Palak Sharma, Advocates for R-4.

J U D G M E N T

ASHOK BHUSHAN, J.

These three appeals have been filed by the suspended director of the corporate debtor challenging the order passed by the adjudicating authority (National Company Law Tribunal, New Delhi Bench, Court – II) in C.P. (IB) 143/ND/2022.

2. Comp. App. (AT) (Ins.) No. 256/2026 has been filed challenging the order dated 21.01.2026 passed in new I.A. No. 312/ND/2026, several other reliefs have been claimed in the appeal. Comp. App. (AT) (Ins.) No. 287/2026 has been filed against the order dated 13.01.2026 passed in new I.A. No. 112/ND/2026. Comp. App. (AT) (Ins.) No. 288/2026 has been filed challenging the order dated 07.01.2026 in RA No. 83/ND/2025 filed by Orbis Trusteeship Services Private Limited, the financial creditor.

3. These three appeals arise out of the same CIRP initiated against the corporate debtor, Nobel Buildtech Private Limited. Brief background facts giving rise to these appeals are:

i. Kindle Infraheights Pvt. Ltd. (the principal borrower) raised funds though issuance of secured Non-Convertible Debentures (NCDs) to Asia Pragati Strategic Investment Fund, respondent No. 3. The debenture issuance was carried out in two tranches namely, ₹130 crore though issuance of 13,000 debentures and ₹6 crore though issuance of 600 debentures.

ii. The respondent No. 2 – Orbis Trusteeship Services Pvt. Ltd. was appointed as Debenture Trustee for the NCDs. Debenture Trust Deeds (DTD) was executed. Nobal Buildtech Pvt. Ltd. the corporate debtor stood as corporate guarantor. NCDs were secured by corporate guarantee, personal guarantees of members of Sikka family and by mortgage of land admeasuring 22,240 sq. metres situated at Plot No. GH-4C, Sector-10, Greater Noida, Uttar Pradesh.

iii. The respondent No. 2, financial creditor initiated proceedings under Section 7 against the principal borrower, corporate guarantors and personal guarantors. Applications against principal borrower, corporate guarantor as well as proceedings under Section 95 of the Insolvency and Bankruptcy Code, 2016 (for short the IBC or the Code) against the personal guarantor were admitted.

iv. Against the orders admitting CIRP against the principal borrower and the corporate guarantor as well as against the personal guarantors, appeals were filed in this Tribunal. Comp. App. (AT) (Ins.) No.1836/2024 filed against the order initiating CIRP against the principal borrower vide order dated 20.09.2024. This Tribunal permitted the Sikka Group to deposit Part IV amount i.e., ₹76,25,21,262/-.

v. In pursuance of the order passed in Comp. App. (AT) (Ins.) No.1836/2024, appellant to show his *bona fide* deposited ₹55 crore before this Tribunal. The financial creditor and Sikka Group entered into settlement. Both the parties having made statement before this Tribunal that settlement has been entered. This Tribunal permitted withdrawal of company appeal by order dated 15.04.2025, with respect to principal borrower and Comp. App. (AT) (Ins.) No. 2187/2024 with respect to corporate debtor by order dated 24.04.2025 and permitted the financial creditor to file the application under Section 12A read with Regulation 30A for withdrawal of the CIRP.

vi. A Settlement Agreement was entered between the parties on 09.05.2025, where parties agreed for withdrawal of CIRP proceedings against all proceedings initiated for CIRP against the principal borrower, corporate debtor as well as personal guarantors. Total settlement amount was fixed as ₹210 crore. ₹55 crore was already paid. ₹40 crore was paid at the time of execution of the Agreement and ₹25

crore was to be paid within 30 days of commencement date and ₹90 crore was paid within 90 days of commencement date.

vii. Settlement Agreement also contemplated that on consequent of default, financial creditor has right to revive the insolvency proceedings and right to sell the mortgage land until full and final payment of all dues. After settlement dated 09.05.2025, an application under Section 12A was filed before the NCLT for withdrawal of IB 143(ND)/2022.

viii. Adjudicating authority held that the Orbis Trusteeship Services Private Limited is a sole financial creditor *qua* the corporate debtor who has preferred the application under Section 12A, the application was allowed and C.P. (IB) No.143(ND)/2022 is dismissed as withdrawn, which order was passed on 31.07.2025.

ix. Order dated 31.07.2025 was uploaded on the website on 26.08.2025. On 28.08.2025, financial creditor issued notice to the principal borrower, corporate debtor and the personal guarantors, communicating that amount of ₹25 core is due on 30.08.2025. It was communicated that notice is given that failure to make the said payment by deadline shall amount to breach of Settlement Agreement and Debenture Trustee may proceed to invoke, enforce all rights and remedies available under the Settlement Agreement. The said notice was replied on 29.08.2025 by corporate debtor communicating that order dated 31.07.2025 although was orally pronounced but it was

signed and uploaded on 26.08.2025, hence the 30 days period for payment is due on or before 25.09.2025.

x. Financial creditor, however, proceeded to file an application I.A.83/2025 on 09.09.2025 praying for revival of the C.P. (IB) No.143/2022 on the ground that amount of ₹25 crore as per Settlement Agreement has not been paid by 30.08.2025 and corporate debtor's unilateral view that clock start from 26.08.2025 finds no support in the Settlement Agreement or applicable law and was plainly an attempt to evade the consequence of delay.

xi. During the pendency of the said I.A.83/2025, the payment was made of ₹25 crore to the financial creditor which was accepted. Application came to be heard on 07.01.2026 by the adjudicating authority. Adjudicating authority noticed that amount of ₹120 crore, out of Settlement amount of ₹210 crore has been paid and corporate debtor is in progress of arranging the balance amount of ₹90 crore.

xii. Application was earlier deferred on 24.11.2025 and again on 10.12.2025. It was submitted by the corporate debtor that willing investor was not inclined to make investments, as the original title deeds/documents regarding mortgage properties of corporate debtor were not available. It was stated that original titles are with financial creditor.

xiii. Adjudicating authority by the order 07.01.2026 allowed the Restoration Application and restored the CIRP which had commenced in terms of

the order dated 05.11.2024. Adjudicating authority, however, noticing the fact that order dated 31.07.2025 was passed permitting withdrawal of the CIRP and the corporate debtor has already paid amount of ₹120 crore and is making efforts to pay the balance, adjudicating authority decided to give 10 days further time to the corporate debtor to pay, during which, RP will not proceed in the matter except for purpose of procurement of documents referred to in the order. Subject to above, the application was disposed of.

xiv. By subsequent order 13.01.2026, corporate debtor's application 112/ND/2026 praying for rectification of the order dated 07.01.2026 was disposed of by replacing the word "conceded" with word "agreed to". It was after the aforesaid the corporate debtor filed an application I.A.312/ND/2026 dated 17.01.2026 praying for extension of 90 days to the corporate debtor to make payment to the debenture holder in terms of the order dated 09.05.2025 with other prayers. The prayers made in I.A. 312/2026 is as follows:

> *"a. Grant an extension of 90 (ninety) days to the Applicant/ Corporate Debtor to make payment to the Debenture Holders in terms of the settlement dated 09.05.2025;*
>
> *b. Direct that during the said extended period, the CIRP shall continue only in a facilitative and non-coercive manner, in line with the orders dated 07.01.2026 and 13.01.2026;*
>
> *c. Permit the Corporate Debtor to complete investor due diligence, obtain requisite debenture holder authorisations, and effect payment in a legally compliant manner; and*

d. Pass such other or further orders as this Hon'ble Tribunal may deem fit in the interest of justice."

xv. In the application 312/2026, corporate debtor pleaded that after the order 07.01.2026, IRP had taken the steps for procuring the certified copy of the lease deed in respect of project land. Corporate debtor has also cooperated with the IRP. It was pleaded that process for regularisation and verification of title documents and completion of investor lead due diligence is presently underway and reasonable limited period is required to enable the investor to complete its internal approvals and facilitate in favour of funds. Prayer of 90 days was consequently made.

xvi. The application was heard by adjudicating authority on 21.01.2026 and by order dated 21.01.2026, the said application has been disposed of. Adjudicating authority after noticing the prayers made in the application and further that the amount of ₹120 crore have already been paid, it was directed that reverse CIRP made in terms of the order dated 07.01.2026 would continue till 04.02.2026. The application was accordingly disposed of.

xvii. As noted above the Comp. App. (AT) (Ins.) No.256/2026 has been filed against the order dated 21.01.2026, and other two appeals have been filed against the order dated 07.01.2026 and 13.01.2026.

4. We have heard learned Sr. counsels Mr. Abhijeet Sinha & Mr. Sumant Batra appearing for the appellants. Learned counsel Mr. Abhishek Anand has appeared for the Resolution Professional (RP). Learned Sr. counsel Mr. Gopal

Jain has appeared for respondent No. 2, the financial creditor and respondent No. 5. Learned counsel Mr. Sumesh Dhawan has appeared for respondent No. 3 and learned Sr. counsel Mr. Krishnendu Datta has appeared for respondent No. 4.

5. Learned counsel for the appellant in support of the appeal contends that corporate debtor and other principal borrower and personal guarantor from very beginning has been making efforts to settle the debts of the financial creditor. The corporate debtor, the entire group using all its resources has made various offers for liquidating the debt of the financial creditor. Amounts were also deposited in the appeals filed in this Tribunal, challenging the initiation of CIRP against the principal borrower. It is submitted that ultimately both the parties decided to settle their issues on settlement amount of ₹210 crore, which settlement led to withdrawal of CIRP against the corporate debtor by order dated 31.07.2025 on an application filed under Section 12A by the financial creditor itself. It is submitted that amount of ₹55 crore was already paid and further amount of ₹40 crore was paid on the execution of the Settlement. Further amount of ₹25 crore was also paid, although with little delay. Amount outstanding was only ₹90 crore for which corporate debtor has made all its efforts, the Noida Authority were approached for accepting a co-developer, which Noida Authority accepted the proposals made. It is submitted that due to original titles not being available, the investor backed out. The monetisation plan could not be fructified. The appellant has bona fide making all efforts to pay the balance amount of ₹90 crore but due to facts beyond the control of the corporate debtor amount could

not be paid. It is submitted that Restoration Application 83/2025 was filed alleging non-payment of ₹25 crore, which was the basis of the application, which amount having been paid and accepted very basis of Restoration Application was unfounded. The financial creditor proceeded to press the said application which was ultimately allowed on 07.01.2026. It is submitted that financial creditor with whom corporate debtor has entered into settlement was duty bound to extend all corporation to complete the monetisation of the assets from which investment was to be received. Financial creditor having been informed that order on 31.07.2025 has been uploaded only on 26.08.2025, hence amount could not be immediately procured from investor, rushed and filed the application on 09.09.2006 for reviving the CIRP. The steps taken by the financial creditor only indicate that the CIRP is being used by the financial creditor as a recovery mechanism. The Settlement having been entered and CIRP having been withdrawn, adjudicating authority ought not to have revived the CIRP when the corporate debtor was willing and making efforts to pay the balance amount. Admittedly, out of ₹210 crore, ₹120 crore was already paid and received by the financial creditor. After receiving a substantial amount, it is not open for the financial creditor to pray for revival. It is further submitted that by I.A.112/2026 was filed by the corporate debtor, since the corporate debtor never conceded to revive the CIRP. Corporate debtor only conceded that given sometime, the corporate debtor shall make the balance payment and RP be directed to procure the all relevant documents. Application for rectification was allowed on 13.01.2026. It is submitted that in I.A.312/ND/2026 prayer was made to

grant extension of 90 days, which 90 days has not been allowed by the adjudicating authority rather time till 04.02.2026 was only allowed up to which the RP was directed not to proceed with the CIRP. The time which was prayed by the appellant was a reasonable time for completion of the monetisation of the assets from which the fund was to be generated for payment of settlement amount. The objectives of the IBC proceedings are to revive the corporate debtor. CIRP proceedings cannot be used as methodology to hostile takeover of the assets of the corporate debtor. The corporate debtor having undertaken to pay the balance amount, CIRP ought not to have been revived. Appellant is still ready and willing to liquidate the balance amount of ₹90 crore. Action of financial creditor in rushing to the adjudicating authority for revival is not in accordance with the objective of the IBC.

6. Learned counsel appearing for the financial creditor, Respondents No. 2 & 5 submits that the ample opportunity was given to the corporate debtor to make the payment of settlement amount as per settlement terms. Amount of ₹25 crore was to be paid within 30 days of the commencement date. Commencement date being the date on which the order was passed by the adjudicating authority for making withdrawal of the CIRP. Corporate debtor committed breach in not making payment on 30.08.2025. As per settlement agreement, consequence of default is provided in clause 2, which provides that any default in payment of any tranche of settlement amount will result in immediate termination of the Agreement. On non-payment of the tranche which was payable by 30.08.2025, Settlement Agreement has been terminated. It is submitted that formerly the Settlement Agreement has now

been terminated by email dated 22.01.2026. It is submitted that on default having been committed by the corporate debtor in making the payment as per the Settlement Agreement, adjudicating authority has rightly revived the CIRP proceedings vide order dated 07.01.2026. Order dated 07.01.2026 is a consent order, where the counsel for the corporate debtor conceded/agreed for revival of the CIRP, hence no appeal can be filed against the consent order. It is submitted that ample opportunity was granted by the adjudicating authority to the corporate data to make the balance payment of ₹90 crore in which he failed, hence the order dated 07.01.2026 was passed. There is no error in the order 21.01.2026, by which order opportunity was again granted to the corporate debtor to make payment by 04.02.2026. It is submitted that present is a case where debt and default is neither disputed nor it is the case of the appellant that appellant has not failed to honour the settlements.

7. Learned counsel appearing for the RP submitted that in pursuance of the order dated 07.01.2025, IRP immediately wrote to both the suspended directors and the financial creditors to provide original title deeds/property documents for implementation of settlement. Email dated 08.01.2026 has been sent to the appellant and affidavit was also filed by the appellant that property document in respect of land bearing plot Plot No. GH-4C, Sector-10, Greater Noida, Uttar Pradesh are not in possession of custody of the corporate debtor, which title deeds were deposited with Orbis Trusteeship Services Pvt. Ltd. Orbis Trusteeship Services Pvt. Ltd. also wrote to the IRP on 08.01.2026, informing that first charge on the land of Greater Noida, UP, and the lease deed was executed on 10.12.2015 between Greater Noida and principal

borrower. Financial creditor informed that no original title documents were submitted with the financial creditor. RP also wrote to the Chief Executive Officer of the Greater Noida for issuance of duplicate certified copy of the documents pertaining to Plot No. GH-4C, Sector-10, Greater Noida, Uttar Pradesh. Learned counsel for the RP submitted that RP has obtained copy of the lease deed from Noida Authority and necessary documents have been given to the suspended directors.

8. Learned counsel appearing for the respondent No. 3 has also submitted that there is no illegality in the order dated 07.01.2026 reviving the CIRP. Corporate debtor having failed to comply the terms of settlement, adjudicating authority has rightly revived the CIRP ample opportunities have been given to the corporate debtor to pay the balance amount. Now title deeds have also been found out and given to suspended directors. It is submitted that on breach of any terms in the Settlement Deed, there is a termination of Settlement Deed, and now the amount due is not ₹90 crore rather full amount is due and payable to the financial creditor.

9. Learned Sr. counsel appearing for the respondent No. 4 also reiterated the above submissions.

10. We have considered the submissions of the counsel for the parties and perused the records.

11. It is an admitted fact that financial creditor and the corporate debtor and other group companies and personal guarantors have settled their disputes and Settlement Agreement was entered between the principal

borrower, corporate debtor, personal guarantors, Orbis Trusteeship Services Pvt. Ltd. and Standard Capital Markets Limited, the prospective debenture holders and the buyers who were to acquire the shareholding of the Nobal Buildtech Private Limited. Settlement amount was fixed as ₹210 crore as full and final settlement. The tranches for payment have been noticed in clause 1(C) of the Settlement Agreement, which is as follows:

> ***"1. Settlement Payment Terms***
>
> *C. The Sikka Group Shall make payments in the following trenches towards the Settlement Amount:*

S. No.	*Date*	*Amount (in INR Crore)*
1.	*Amount already Paid*	*55*
2.	*At the time of execution of this Agreement*	*40*
3.	*Within 30 days of the Commencement Date*	*25*
4.	*Within 90 days of the Commencement Date*	*90*
	Total	*210"*

12. It was after Settlement Agreement dated 03.05.2025, an application under Section 12A was filed by the financial creditor being I.A. No.2874/2025, under Section 12A for withdrawal of the CIRP being C.P. IB 143/ND/2022. Adjudicating authority in detail noticed all relevant facts. Adjudicating authority also found that the Orbis Trusteeship Services Pvt. Ltd. is the sole financial creditor *qua* corporate debtor. Operative portion of the order of the adjudicating authority allowing 12A application is as follows:

> *"In the wake of the aforementioned, particularly the Applicant i.e. Orbis Trusteeship Services Private Limited, is sole Financial Creditor qua the Corporate Debtor and had preferred the present application for withdrawal of IB-143/ND/2022, the* ***IA is allowed*** *and IB-143/ND/2022* ***is dismissed as withdrawn."***

13. It is the case of the appellant that although order dated 31.07.2025 was passed for making withdrawal, but the order dated 31.07.2025 could be uploaded only on 26.08.25, the financial creditor on 28.08.2025 immediately issued notice to the corporate debtor, principal borrower and personal guarantor putting the corporate debtor to notice that, in event the payment is not made by 30.08.2025, the financial creditor shall proceed to invoke and enforce its right. It is useful to notice letter dated 28.08.2025, which is stated as follows:

> *"Accordingly, the third tranche of INR 25 Crores stands due and payable on or before 30*
>
> *August 2025.*
>
> *You are hereby formally called upon and directed to remit the aforesaid sum of INR 25 Crores on or before 30 August 2025 strictly in accordance with the terms of the Settlement Agreement.*
>
> *Take notice that failure to make the said payment by the stipulated deadline shall amount to a breach of the Settlement Agreement. in such event, the Debenture Trustee shall, without any further correspondence, proceed to invoke and enforce all rights and remedies available under the Settlement Agreement, the transaction documents including TD-1 and DTD-2, and applicable law, including but not limited to initiating legal and enforcement proceedings. All costs and consequences thereof shall be to your account.*
>
> *This notice is issued on behalf of and for the benefit of the Debenture Holders and is without prejudice to all their rights, remedies and entitlements in law and in equity*
>
> *Yours faithfully,"*

14. The above letter was immediately replied by corporate debtor, pleading that 30 days' timeline would commence from date from 26.08.2025, on which

date the order was uploaded. Reply to legal notice was given in following manner:

> *"To*
>
> *Date: 29.08.2025*
>
> *Orbis Trusteeship Services Pvt. Ltd.*
>
> *4A, Ocus Technopolis*
>
> *Sector-54.*
>
> *Golf Club, Gurgaon-122002*
>
> *Subject: Reply to Legal Notice dated 28.08.2025 regarding Second Tranche under Settlement Deed*
>
> *Dear Sir(s),*
>
> *We write in response to your Notice dated 28.08.2023 demanding payment of the second tranche under the Settlement Deed executed between the Companies.*
>
> *At the outset, we wish to reaffirm our commitment to the settlement and to its timely implementation. The first tranche has already been paid in time, which demonstrates our bona fides and intent to fully comply with the agreed terms.*
>
> *With respect to the second tranche, the Settlement Deed clearly provides that the 30-day timeline would commence from the date of passing of the withdrawal order by the Hon'ble NCLT. Although the matter was orally pronounced on 31.07.2025, the order was neither signed nor uploaded at that stage. As is well established, an order is deemed to have been passed only when it is signed and dated by the Hon'ble Bench.*
>
> *In this case, despite repeatedly mentioning before the Beach, the order was signed find uploaded only on 26.08.2025. Accordingly, the 30-day period for payment of the second tranche runs from 26.08.2025 and is due on or before 25.09.2025.*
>
> *We are fully prepared to make the payment within this period in terms of the Settlement Deed. We trust this clarifies our position and assures you of our continued commitment to closing this matter amicably.*
>
> *Yours sincerely*
>
> *For Nobal Buildtech Pvt. Ltd.*

(Authorized Signatory)"

15. It is relevant to notice that the financial creditor proceeded to file an application I.A. 83/2025 praying for revival of the CIRP on account of default of non-payment of ₹25 crore within 30 days. In the application, after narrating earlier facts in paragraphs 2(x) and (xi) following was pleaded:

> *"2. The facts which have resulted in filing of the instant application are as under:*
>
> *(x) Clause 1(B) of the Settlement Agreement clearly ties the commencement of the payment timelines to the passing of the NCLT's withdrawal order, which occurred on 31.07.2025. Thus, the 30-day period for the INR 25 Crore tranche ran from 31.07.2025 and expired on 30.08.2025. The Corporate Debtor's unilateral view that the clock starts from 26.08.2025 finds no support in the Settlement Agreement or applicable law, and was plainly an attempt to evade the consequences of its delay.*
>
> *(xi) In view of the foregoing, it is evident that the Corporate Debtor defaulted under the Settlement Agreement by failing to pay the tranche of INR 25 Crores by 30.08.2025. Clause 2 of the Settlement Agreement, titled "Consequences of Default", squarely addresses this situation. It provides, inter alia, that any default in payment of any tranche of the Settlement Amount "will result in immediate termination of this Agreement", and that the Debenture Trustee (on behalf of the NCD holders) "continues to have, hold and retain all rights and remedies" under the original financing documents and law, "including the right to revive the insolvency proceedings", until full and final payment of all dues is received. In other words, upon a default, the entire settlement stands vitiated and the Financial Creditor's enforcement rights are fully restored, as if no compromise had been reached (save that any part payments already made are to be adjusted against the total liability)."*

16. Appellant's case is that amount of ₹25 crore on breach of which RA 83/2025 was filed, was subsequently paid and received by the financial

creditor, which fact is not disputed. It is an admitted case of the parties that now only an amount of ₹90 crore is due, which has not been paid.

17. By order dated 07.01.2026 adjudicating authority has allowed the application RA 83/2025, however, while allowing the RA 83/2025, adjudicating authority exercised its jurisdiction under Rule 11 of the NCLT Rules, 2016 extended for a period of limited 10 days during which period RP was to hold back and will not proceed with CIRP except to the extent of procuring the documents leading by its ex-management in its endeavour to implement the Settlement. It is useful to notice following observations of the adjudicating authority:

> *"…Nevertheless, since a lot water could flow after the aforementioned order and in the wake of the order passed by Hon'ble NCLAT, we could pass the order dated 31.07.2025 and thereafter in Civil Suit (Comm) 6/2026, the Hon'ble High of Court of Delhi passed order dated 06.01.2026, we are inclined to exercise our discretion in terms of the provisions of Rule 11 of the NCLT Rules, 2016 to the extent that for a limited period of 10 days the RP will hold back and will not proceed with the CIRP except to the extent of procuring the documents needed by the ex-management in its endeavor to implement the settlement and pay the balance amount in terms thereof to the FC. In a way, for a period of 10 days, the RP will conduct the process only in the nature of reverse CIRP to facilitate the suspended management to pay the balance amount in terms of the settlement…"*

18. Adjudicating authority thus was well aware that ex-management is making all endeavours to implement the settlement and pay balance amount of ₹90 crore for which purpose the adjudicating authority has asked the RP to hold back. Adjudicating Authority, however, observed that in the event, the payment is made within 10 days, the order dated 31.07.2025 will become

operative and CIRP shall stand terminated. Following observations are made by the adjudicating authority by disposing of the application:

> *"…Nevertheless, for 10 days the RP will hold back and will not proceed in the matter except for the purpose of procurement of the documents referred to hereinabove / duplicates thereof. In the event of making the payment by the Corporate Debtor to the Financial Creditor within 10 days, the order dated 31.07.2025 will become operative and the CIRP will stand culminated /terminated without there being any requirement of filing any further application by either of the parties and the CD will be relieved of all the rigorous of CIRP. As has been directed hereinabove, if payment in terms of the settlement is not made within 10 days, the CIRP will be regulated in terms of the IBBI (CIRP) Regulations, 2016 and the RP will discharge all such functions, he is required to perform as the relevant provisions of IBC and aforementioned regulations for the purpose of resolution of insolvency of CD. It is also amplified that the procurement of the documents referred to hereinabove or duplicate thereof would not be sine qua non for payment of balance amount within 10 days from today. We expect the RP to act promptly in the direction of procurement of documents/ duplicates thereof (ibid).* ***Subject to aforementioned, the application stand disposed of…"***

19. It was after 07.01.2026, IRP issued notice to the suspended director and the financial creditor. Financial creditor has informed RP that first charge holder is the Greater Noida and it had not received the original documents. RP has made endeavour and obtained copy of the lease deed from the Noida Authorities. The application 312/2025 was filed by the corporate debtor, giving events and facts subsequent to the order dated 07.01.2026. It was pleaded by the corporate debtor that corporate debtor all times have cooperated with the IRP. IRP, after the order dated 07.01.2026 has

approached procured the certified copy of the lease did in respect of the project. In paragraphs 5 & 6 of the application, following has been pleaded:

> *"5. That in the continuum of steps undertaken pursuant to the orders of this Hon'ble Tribunal, the process of regularisation and verification of title documentation and completion of investor-led due diligence is presently underway. In this backdrop, the Applicant respectfully submits that a reasonable and limited period is required to enable the proposed investor to complete its internal approvals and to facilitate infusion of funds, so as to discharge the balance amount payable under the settlement in an orderly and compliant manner.*
>
> *6. That the present Application is confined to seeking a reasonable extension of time of 90 (ninety) days to enable the Caproate Debtor to make payment to the Debenture Holders under the settlement, without triggering coercive insolvency consequences, and to ensure that the very purpose of the orders dated 07.01.2026 and 13.01.2026 is fulfilled in substance and not defeated by procedural or commercial impracticability."*

20. In paragraph under the heading grounds for seeking extension, several facts have been pleaded. It was also pleaded that factum or transfer of debentures to Standard Capital Market Limited was not placed before the Tribunal at the time of passing of the order, whereas earlier debenture holders had transferred debenture exposure to third-party namely Standard Capital Market Limited for which debenture sale and purchase agreement dated 09.05.2025 was executed. It was further pleaded that granting 90 days has cause no prejudice whatsoever to the creditor or the debenture trustee. In paragraphs 16 & 17, following was pleaded:

> *"16. It is respectfully submitted that granting a limited extension of ninety (90) days would cause no prejudice whatsoever to the creditor or the Debenture Trustee, inasmuch as the Corporate Insolvency Resolution*

Process already stands restricted by judicial order, no Committee of Creditors has been constituted, no third-party rights have crystallised, and the underlying debt continues to remain fully secured at all material times.

17. That on the other hand, refusal of reasonable time would frustrate an otherwise viable settlement, contrary to the settled principle that insolvency proceedings should not be continued where settlement is bona fide and achievable."

21. As noted above the adjudicating authority, noted the prayers made in I.A.312/2026, however, accepted the prayer for extending the time only till 04.02.2026 that is for a period of two weeks only. Appellant aggrieved by the order 21.01.2026 has filed Comp. App. (AT) (Ins.) No. 256/2026, as noted above.

22. In the present appeals, one of the important facts relevant to notice is that financial creditor i.e., Orbis Trusteeship Services Pvt. Ltd. is only financial creditor in the CIRP of the corporate debtor, which facts have been noted while allowing the 12A application filed by the Orbis Trusteeship Services Pvt. Ltd. in its order dated 31.07.2025. Orbis Trusteeship Services Pvt. Ltd. is the financial creditor of the corporate debtor. Hon'ble Supreme Court had occasion to consider the pivotal role to be played by the financial creditor in the CIRP resolution of the corporate debtor. In this context, we need to notice the judgement of the Hon'ble Supreme Court in the matter of ***'Swiss Ribbons Private Limited & Anr.' Vs. 'Union of India & Ors.'*** reported in **[(2019) 4 SCC 17].** Hon'ble Supreme Court in the above case had considered the legislative scheme under Sections 7, 8 & 9 of the IBC and other related issues. Hon'ble Supreme Court held that the primary focus of the

legislation is to ensure revival and continuation of the corporate debtor. In paragraph 28 of the judgement, following has been laid down:

> ***"28.*** *It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors…"*

23. Further in paragraph 51, Hon'ble Supreme Court has noticed the functions of financial creditors in respect to the corporate debtor. Role of financial creditor was held to be quite different from the operational creditors, who were also to preserve the corporate debtor as a going concern. In paragraph 51 of the judgement, following was laid down:

> ***"51.*** *Most importantly, financial creditors are, from the very beginning, involved with assessing the viability of the corporate debtor. They can, and therefore do, engage in restructuring of the loan as well as reorganisation of the corporate debtor's business when there is financial stress, which are things operational creditors do not and cannot do. Thus, preserving the corporate debtor as a going concern, while ensuring maximum recovery for all creditors being the objective of the Code, financial creditors are clearly different from operational creditors and therefore, there is obviously an intelligible differentia between the two which has a direct relation to the objects sought to be achieved by the Code."*

24. Hon'ble Supreme Court in **[(2020) 8 SCC 401]** in the matter of ***'Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited' Vs. 'Axis Bank Ltd. & Ors.'*** had again reiterated that financial creditors under the IBC has been concerned with the majority rather pivotal role in the process contemplated by Part – II, who is involved from very beginning with the corporate debtor and is indeed engaged in restructuring of the loan as well

as reorganisation of the corporate debtor business, when there is a financial stress. In paragraph 42.3 following was observed:

> ***"42.3.*** *The enunciation aforementioned illuminates the reasons as to why at all a financial creditor is conferred with a major, rather pivotal, role in the processes contemplated by Part II of the Code. It is the financial creditor who lends finance on a term loan or for working capital that enables the corporate debtor to set up and/or operate its business; and who has specified repayment schedules with default consequences. The most important feature, as this Court has said, is that a financial creditor is, from the very beginning, involved in assessing the viability of the corporate debtor who can, and indeed, engage in restructuring of the loan as well as reorganisation of the corporate debtor's business when there is financial stress. Hence, a financial creditor is not only about in terrorem clauses for repayment of dues; it has the unique parental and nursing roles too. In short, the financial creditor is the one whose stakes are intrinsically interwoven with the well-being of the corporate debtor."*

25. It is also relevant to notice that in Supreme Court in **[(2022) 3 SCC 161]** in the matter of ***'E.S. Krishnamurthy & Ors.' Vs. 'Bharat Hi-Tecch Builders Private Ltd.'*** has held that settlement have to be encouraged because the ultimate purpose of the IBC is to facilitate the continuation and rehabilitation of the corporate debtor. In the above case, Section 7 application which was filed for initiating CIRP by the financial creditor was not admitted and adjudicating authority directed the respondent to settle the claims within three months, which order came to be challenged by the Hon'ble Supreme Court. In the above context following observations was made in paragraph 35 of the judgement:

> ***"35.*** *Undoubtedly, settlements have to be encouraged because the ultimate purpose of IBC is to facilitate the*

> *continuance and rehabilitation of a corporate debtor, as distinct from allowing it to go into liquidation. As the Statement of Objects and Reasons accompanying the introduction of the Bill indicates, the objective of IBC is to facilitate insolvency resolution "in a time-bound manner" for maximisation of the value of assets, promotion of entrepreneurship, ensuring the availability of credit and balancing the interest of all stakeholders. What the adjudicating authority and appellate authority, however, have proceeded to do in the present case is to abdicate their jurisdiction to decide a petition under Section 7 by directing the respondent to settle the remaining claims within three months and leaving it open to the original petitioners, who are aggrieved by the settlement process, to move fresh proceedings in accordance with law. Such a course of action is not contemplated by IBC."*

26. Hon'ble Supreme Court thus has categorically laid down that ultimate purpose of IBC is to facilitate continuation and rehabilitation of the corporate debtor. Reverting to the facts of the present case after entering Settlement between the financial creditor and the corporate debtor, CIRP was withdrawn under Section 12A by order dated 31.07.2025, out of settlement amount of ₹210 crore, ₹120 crore had already been paid. Appellant's case is that due to unavailability of the title deeds of the mortgage land, there was difficulty in monetisation of the assets and it was only after order dated 07.01.2026, RP took steps by publishing notice for obtaining the title deeds of the mortgage land. It is further to be noticed that corporate debtor throughout has been pleading that it is willing to honour the settlement and pay the balance amount of ₹90 crore and by the application 312/ND/2026, time of 90 days was prayed for. We have noticed above that adjudicating authority vide order dated 21.01.2026 only allowed two weeks' time till 04.02.2026.

27. In the present appeal, the protection which was granted by the adjudicating authority vide order dated 21.01.2026 till 04.02.2026 was continued. We have already noted the pleadings in I.A.312/2026, where it was pleaded that process of regularisation and verification of title documents and completion of investor led due diligence is presently underway. Reasonable and limited period was required to enable the proposed investor to complete its internal approvals and to facilitate infusion of funds. Adjudicating authority in the order dated 21.01.2026 although has not adverted to the pleadings in the application and facts pleaded, however granted limited protection for a period of two weeks. We are of the view that appellant has made out a case for grant of period of 90 days as prayed in I.A.312/ND/2026 to implement the settlement by paying the balance of ₹90 crore.

28. Adjudicating authority itself has permitted withdrawal of CIRP vide order dated 31.07.2025 settlement was entered, which appellant is claiming to implement. The reason regarding non-availability of the title deeds was also noted and pleaded before the adjudicating authority, which title deeds have now been procured as submitted by the learned counsel for the RP. We, thus are satisfied that sufficient cause was made out in the I.A.312/ND/2026 to grant 90 days' time to appellant to make payment to the debenture holders in terms of settlement dated 09.05.2025. Application 312/ND/2026 deserves to be allowed in the facts of the present case.

29. We thus are of the view that order dated 21.01.2026, deserves to be modified by allowing I.A.312/ND/2026. Period of 90 days as prayed in the application shall commence from date of passing of this order.

30. In result, all the appeals are disposed of in following manner:

i. I.A.312/2026 filed by the appellant is allowed. Order dated 21.01.2026 passed by the adjudicating authority is modified to the above extent.

ii. In event, appellant is able to make payment of ₹90 crore as per Settlement Deed dated 09.05.2025 within the period of 90 days, the order dated 31.07.2025, withdrawing the CIRP shall become operative and CIRP shall stand terminated as already contemplated in the order dated 07.01.2026.

iii. The financial creditor, RP shall render all necessary assistance to the corporate debtor towards implementation of Settlement Deed dated 09.05.2025.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

25th February, 2026

himanshu

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 320
IB-143/ND/2022
New IA-312/ND/2026

IN THE MATTER OF:

Orbis Trusteeship Services Private Limited ... Applicant

Versus

Nobal Buildtech Private Limited ... Respondent

Under Section: 7 of IBC, 2016

Order delivered on 21.01.2026

CORAM:
SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

MS. REENA SINHA PURI
HON'BLE MEMBER (T)

PRESENT:

For the Applicant	**:**	Adv. Sumesh Dhawan, Adv. Mallika Kamal, Adv. Shivam Sharan
For the Corporate Debtor	**:**	Sr. Adv. Rajeeve Mehra, Adv. Sumant Batra, Adv. Neeha Nagpal, Adv. Malak Bhatt, Adv. Vivek Kumar, Adv. Rohan T., Adv. Sarthak Bhandari, Adv. Riya Kumar Arora
For the RP	**:**	Adv. Amar Vivek, Adv. Aditya Gauri, Adv. Damini Srestha, Adv. Anant Jain, Adv. Aryan Chhabra, Mr. Hemant Sethi in person.

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-312/ND/2026: In terms of the order dated 07.01.2026, we could restore the CIRP, but in view of the fact that the Corporate Debtor had already parted with an amount of Rs. 120 Crores and has paid same to the Creditors, to enable the Suspended Management to trace the misplaced documents or procure the duplicate thereof, we kept the CIRP in reverse mode for the period of 10 days. The period so granted was over on 17.01.2026. Now at this stage the Suspended Management has preferred the present application with the following prayer:-

a. Grant an extension of 90 (ninety) days to the Applicant/ Corporate Debtor to make payment to the Debenture Holders in terms of the settlement dated 09.05.2025;
b. Direct that during the said extended period, the CIRP shall continue only in a facilitative and non-coercive manner, in line with the orders dated 07.01.2026 and 13.01.2026;
c. Permit the Corporate Debtor to complete investor due diligence, obtain requisite debenture holder authorisations, and effect payment in a legally compliant manner; and

During the course of hearing, Mr. Rajeeve Mehra Advocate and Mr. Sumant Batra submitted that since the Suspended Management had already parted with an amount of Rs. 120 Crores, the Suspended Directors are making desperate efforts to arrange the balance amount of settlement viz. Rs. 90 Crores to pay.

Mr. Sumesh Dhawan, Ld. Counsel for Financial Creditor submitted that amount of Rs. 90 Crores was payable only in terms of the settlement and once the Creditor is not prepared to stand by the settlement, there would be no justification or logic now to extend the arrangement beyond 07.01.2026 for any period. He also submitted that in view of failure of settlement the original claim of the Financial Creditor mentioned in the application preferred under Section 7(2) of IBC, 2016 stand restored.

In any case, it is not in dispute that the Suspended Management arranged an amount of Rs. 120 Crores and paid the same to the Financial Creditor. The only relief sought in the application is that the CIRP may be directed to be continued in reverse mode i.e. in a facilitative and non-coercive manner for another 90 days.

Only for the reason that Suspended Management has parted with an amount of Rs. 120 Crore, and by way of showing indulgence, we order that the arrangement of reverse CIRP made in terms of the order dated 07.01.2026 would continue till 04.02.2026 and not beyond in any circumstances. As far as stand taken by Mr. Sumesh Dhawan is concerned, we would not comment upon the same and it

would be between the parties to take their call regarding settlement. Subject to the aforementioned observations, **the present application is disposed of.**

It is made abundantly clear that no further application regarding continuation of CIRP in facilitating and non-coercive manner i.e. in reverse mode would be entertained and if settlement is not finalized by 04.02.2026 the Resolution Professional will publish Form-A in terms of Section 13 and 15 of IBC, 2016 read with Regulation 6 of IBBI (CIRP) Regulation, 2016 immediately on 05.02.2026, and regular CIRP would commence.

Sd/-
(REENA SINHA PURI)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

Iqraa/Ruchita

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 201
IB-143/ND/2022
RA-83/ND/2025

IN THE MATTER OF:
Orbis Trusteeship Services Private Limited ... Applicant/Petitioner

Versus

Nobal Buildtech Private Limited ... Respondent

Under Section: 7 of IBC, 2016

Order delivered on 07.01.2026

CORAM:
SH. ASHOK KUMAR BHARDWAJ **MS. REENA SINHA PURI**
HON'BLE MEMBER (J) **HON'BLE MEMBER (T)**

PRESENT:

For the Applicant	:	Adv. Sumesh Dhawan, Adv. Meghna Mishra, Adv. Shivam Sharan, Adv. Mallika Komal, Adv. Pranjit Bhattacharya
For the Respondent	:	Adv. Sumant Batra, Adv. Vivek Kumar, Adv. Neeha Nagpal, Adv. Rohan Tewari Adv. Sumant Batra, Adv. Neeha Nagpal, Adv. Malak Bhatt, Adv. Vivek Kumar, Adv. Rohan Tewari, Adv. Sarthak Bhandari, Adv. Riya Kaur Arora, Adv. Raveena Paniker For Corporate Debtor
For the RP	:	Adv. Amar Vivek, Adv. Aditya Gauri, Adv. Damini Srestha, Adv. Anat Jain, Adv. Aryan C., Mr. Hemant Sethi (RP)

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

RA-83/ND/2025: The prayer made in the captioned application reads thus:-

(a) Allow the present Application;

(b) Revive the captioned Company Petition, titled "*Orbis Trusteeship Services Private Limited Vs. Nobal Buildtech Private Limited*" bearing No. CP (IB) 143 of 2022 that was filed under Section 7 of the Insolvency and Bankruptcy Code, 2016;

(c) Fix a date of hearing for adjudication of the reliefs sought in the Petition;

(d) Pass such other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

Adjournment qua the application could be taken by the Corporate Debtor from time to time on the ground that an amount of Rs. 120 crore on account of settlement had already been paid to the Financial Creditor and the Corporate Debtor was in the process of arranging the balance amount of Rs. 90 crore. On the stand taken by Mr. Vivek Kumar, Advocate on behalf of the Corporate Debtor that the settlement would be implemented by 24.11.2025, we could grant him two weeks' time to file reply and deferred the hearing to 24.11.2025. On 24.11.2025, again, on submission made by Mr. Vivek Kumar, Ld. Counsel for the CD that the settlement would be implemented within two weeks, the hearing was deferred to 10.12.2025. The hearing was again deferred from time to time only to enable the CD to implement the settlement.

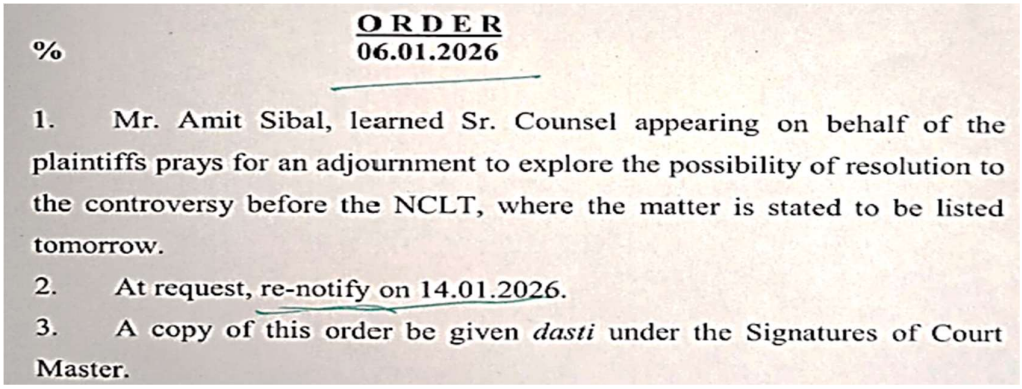
In any case, it has been the plea on behalf of the Corporate Debtor that the willing investor was not inclined to make investments, as the original title deeds / documents regarding certain mortgage properties of Corporate Debtor were not available. When it could be stand taken on behalf of the Corporate Debtor that the original documents are with the Financial Creditor, Mr. Dhawan submitted that apparently these were only the photocopies provided to the Financial Creditor and originals are not with it.

Today Mr. Batra made his submissions on merits and after we reserved the application for order, he conceded the prayer made in the application and submitted that the present RA may be allowed and the CIRP may be restored.

In view of the stand taken by him, **we allow the RA and restore the CIRP** commenced in terms of the order dated 05.11.2024.

Nevertheless, since a lot water could flow after the aforementioned order and in the wake of the order passed by Hon'ble NCLAT, we could pass the order dated 31.07.2025 and thereafter in Civil Suit (Comm) 6/2026, the Hon'ble High of Court of Delhi passed order dated 06.01.2026, we are inclined to exercise our discretion in terms of the provisions of Rule 11 of the NCLT Rules, 2016 to the extent that for a limited period of 10 days the RP will hold back and will not proceed with the CIRP except to the extent of procuring the documents needed by the ex-management in its endeavor to implement the

settlement and pay the balance amount in terms thereof to the FC. In a way, for a period of 10 days, the RP will conduct the process only in the nature of reverse CIRP to facilitate the suspended management to pay the balance amount in terms of the settlement. The order dated 06.01.2026 passed by the Hon'ble High of Court of Delhi reads thus:-



ORDER
06.01.2026

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1. Mr. Amit Sibal, learned Sr. Counsel appearing on behalf of the plaintiffs prays for an adjournment to explore the possibility of resolution to the controversy before the NCLT, where the matter is stated to be listed tomorrow.
2. At request, re-notify on 14.01.2026.
3. A copy of this order be given *dasti* under the Signatures of Court Master.

In the wake of the aforementioned order passed by the Hon'ble High Court and by invoking our inherent power Rule 11 of NCLT Rules, 2016, we direct the concerned District Administration to extend all possible support / assistance to RP either to procure the original documents / tittle deeds etc. as referred to by the Corporate Debtor as the documents needed by it to bring in the investor to pay the balance amount in terms of the settlement entered into by the parties or the duplicate of the documents are made available within 10 days from today. At the same time, the Corporate Debtor will pay the balance amount in terms of settlement / Rs. 90 Crore to the Applicant within the given time of 10 days. It is made clear that if the balance amount is not paid within 10 days from today, the CIRP as restored will continue.

Nevertheless, for 10 days the RP will hold back and will not proceed in the matter except for the purpose of procurement of the documents referred to hereinabove / duplicates thereof. In the event of making the payment by the Corporate Debtor to the Financial Creditor within 10 days, the order dated 31.07.2025 will become operative and the CIRP will stand culminated / terminated without there being any requirement of filing any further application by either of the parties and the CD will be relieved of all the rigorous of CIRP. As has been directed hereinabove, if payment in terms of the

settlement is not made within 10 days, the CIRP will be regulated in terms of the IBBI (CIRP) Regulations, 2016 and the RP will discharge all such functions, he is required to perform as the relevant provisions of IBC and aforementioned regulations for the purpose of resolution of insolvency of CD. It is also amplified that the procurement of the documents referred to hereinabove or duplicate thereof would not be sine qua non for payment of balance amount within 10 days from today. We expect the RP to act promptly in the direction of procurement of documents / duplicates thereof (ibid). **Subject to aforementioned, the application stand disposed of.**

Sd/-
(REENA SINHA PURI)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)
CP NO. (IB)- 143/(ND)/2022

IN THE MATTER OF:

Orbis Trusteeship Services Private Limited
Regd. Office at:
4A, Ocus Technopolis,
Sector 54, Golf Club, Gurugram,
Haryana- 122002

... Applicant/ Financial Creditor

Versus

Nobal Buildtech Private Limited
Regd. Office at:
C-60, Vikas Marg,
Preet Vihar, Delhi - 110092

... Respondent/ Corporate Debtor

Under Section: 7 of IBC, 2016

Order delivered on 05.11.2024

CORAM:
SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant	**:**	Adv. Sumesh Dhawan, Adv. Mallika Kamal, Adv. Devarayan, Adv. Pranjit Bhattacharya, Adv. Vatsala Kak, Adv. Shaurya Shyam
For the Respondent	**:**	Adv. Vivek Kumar, Adv. Deepak Khosla
For the RP	**:**	Adv. Dhananjaya Sud, Adv. Akhand Pratap Singh

ORDER

The captioned petition has been filed under the provision of Section 7 of the IBC, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Orbis Trusteeship Services Private Limited (hereinafter, "Applicant/ Debenture Trustee") to initiate corporate insolvency resolution process against Nobal Buildtech Private Limited (hereinafter, "Respondent/ Corporate Debtor"). Stating succinctly, the

Applicant was appointed as a Debenture Trustee to act for the benefit of and on behalf of the Asia Pragati Strategic Investment Fund (hereinafter, "Debenture Holder") which had extended financial facilities to Kindle Infraheights Private Limited (hereinafter, "Principal Borrower") for development of certain real estate projects.

2. The Applicant has stated that the Principal Borrower had availed financial facility of an amount of Rs. 130 crores from the Debenture Holders by way of issuance and allotment of Non- Convertible Debentures (NCD 1) and the terms and conditions for the said debt were recorded in the Debenture Trust Deed dated 28.06.2019, which was amended and reiterated on 30.09.2020. The Applicant further stated that for the purposes of additional funding, an additional amount of Rs. 6 crore was given by the Debenture Holder to the Principal Borrower as consideration for another tranche of (NCD 2) which fact was recorded in the Debenture Trust Deed dated 25.02.2021 entered into between the Applicant, the Principal Borrower and the Guarantors, including the Respondent herein which was amended and reiterated on 01.10.2020. The Applicant has contended that by way of the aforesaid Debenture Trust Deeds, the Respondent had irrevocably and unconditionally guaranteed the discharge of all debts owed to the Debenture Holders in the event of default in repayment.

3. The Applicant has stated that after the failure of the Principal Borrower in repaying the outstanding debt liabilities, the Personal and Corporate Guarantors, including the Respondent, were called upon to repay the aforementioned debt by way of demand notice dated 01.11.2021.

4. As per Part-IV of the application, the amount claimed to be in default stands at Rs. 255,07,26,925/-. Further, the Applicant has stated that the default occurred when the Respondent failed to repay the debt amount within 3 months of the invocation of guarantee viz 01.11.2021. Relevant excerpt of Part- IV of the application reads thus: -

PART-IV

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	The Applicant, a Debenture Trustee (acting for the benefit and on behalf of the Debenture Holders Asia Pragati Strategic Investment Fund), had extended a secured debt and facility to Kindle Infraheights Private Limited (hereinafter referred to as the **"Principal Borrower"**) by subscribing to secured, unlisted, redeemable, freely transferable, non-convertible debentures (hereinafter referred to as **"NCDs"**) of the below-listed values:— 1. 13000 [Thirteen Thousand] NCDs of a face value of INR 1,00,000 [Indian Rupees One Lakh only] each, aggregating to **INR 130,00,00,000** [Indian Rupees One Hundred and Thirty Crores only] on July 1, 2019 (under Debenture Trust Deed dated June 27, 2019 as amended by the Amended and Restated Debenture Trust Deed dated September 30, 2020 and related transaction/security documents); and 2. 600 [Six Hundred] NCDs of a face value of INR 1,00,000 [Indian Rupees One Lakh only] each, aggregating to **INR 6,00,00,000** [Indian Rupees Six Crores only] on March 9, 2021 (under Debenture Trust Deed dated February 25, 2021 and related transaction/security documents).

2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	The total amount claimed to be in default is Rs. 255,07,26,925/- (Rupees Two Hundred Fifty Five Crores Seven Lakhs Twenty Six Thousand Nine Hundred and Twenty Five Only) as due and payable on 2 February 2022 plus further applicable interest from 2 February 2022 till actual date of payment, details of which are as set out below: (i) INR 249,71,94,641/- being due and payable as on 2 February 2022 under the Amended and Restated Transaction Documents (as defined below) plus further applicable interest from 2 February 2022 till date of payment; and (ii) INR 5,35,32,284/- being due and payable as on 2 February 2022 under the Transaction Documents, 2021 (as defined below) plus further applicable interest from 2 February 2022 till date of payment.
		The total outstanding amount claimed to be in default includes the subscription amount of the NCDs along with the coupon payment amounts and default interest accrued therein for the redemption and repayment of which the Corporate Guarantees were issued, invoked and not repaid; and includes interest accrued on such amounts due to non-payment. The Corporate Guarantees were invoked on November 01, 2021 which were to be paid, under the Corporate Guarantees, within three days thereafter, but has remained unpaid by the Respondent (and other corporate guarantors). ➢ A statement of computation of the current outstanding amount including all the defaulted amounts and days of default in respect of the above facilities is hereto annexed and marked as "**Exhibit -7**".

5. The corporate guarantee deed dated 28.06.2019 regarding the first tranche of NCD issued by the Principal Borrower with respect to which the CD had given a corporate guarantee has been annexed with the application and relevant excerpt of the same reads thus:

CORPORATE GUARANTEE

THIS CORPORATE GUARANTEE (Guarantee) is executed on this 28th day of June 2019, between:

1. **SIKKA PROMOTERS PRIVATE LIMITED,** private limited company incorporated and existing under the laws of India, with corporate identification number U74899DL1986PTC024571 and having its registered office at C - 60, Vikas Marg, Preet Vihar, New Delhi - 110009 (hereinafter referred to as the **"Guarantor-1"**, which expression shall, unless excluded by or repugnant to the context or meaning thereof, include its successors and assigns);

2. **SARA BUILDCON PRIVATE LIMITED,** a company incorporated under the provisions of the 1956 Act with corporate identification number U70200DL2010PTC207613 and having its registered office at C-60, Vikas Marg, Preet Vihar, Delhi 110009 (hereinafter referred as **"Guarantor-2"**, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in title and permitted assigns);

3. **INTEGRATED BUILDERS PRIVATE LIMITED,** a company incorporated under the provisions of the 1956 Act with corporate identification number U70200DL2010PTC199412 and having its registered office at Sikka House, C-60, Preet Vihar, Vikas Marg, Delhi - 110092 (hereinafter referred as **"Guarantor-3"**, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in title and permitted assigns);

4. **G.S. PROMOTERS PRIVATE LIMITED,** a company registered under the provisions of the 1956 Act with corporate identification number U74899DL1988PTC032652 and having its registered Office at C - 60, Vikas Marg, Preet Vihar, Delhi- 110092 (hereinafter referred as **"Guarantor 4"** which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in title and permitted assigns); and

5. **NOBAL BUILDTECH PRIVATE LIMITED,** a company registered under the provisions of the 1956 Act with corporate identification number U70102DL2013PTC258879 and having its registered Office at C - 60, Vikas Marg, Preet Vihar, Delhi- 110092 (hereinafter referred as **"Guarantor 5"** which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in title and permitted assigns);

IN FAVOUR OF:

6. **ORBIS CAPITAL LIMITED,** a company registered under the Companies Act, 1956, with corporate identification number U74991HR2006PLC036951, having its registered office at 4A, Technopolis, Sector 54, Golf Club Road, Gurgaon, Haryana - 122002, acting as the debenture trustee for the Debenture Holder (hereinafter referred to as the **"Debenture Trustee"**, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns).

WHEREAS:

(A) Pursuant to a debenture trust deed dated 27 June 2019 **(Debenture Trust Deed)** entered into between the Guarantors, Kindle Infraheights Private Limited **(Issuer)**, the Debenture Trustee and others, the Issuer has agreed to issue and allot 13,000 (Thirteen Thousand only) secured, unlisted, redeemable, freely Transferable (defined below) non-convertible debentures of a face value of INR 1,00,000 each (Indian Rupees One Lakh only) aggregating to INR 130,00,00,000 (Indian Rupees One Hundred and Thirty Crores only) **(Debentures)** on the terms and conditions set out under the Debenture Trust Deed.

(B) In relation to the Debentures, the Issuer has appointed the Debenture Trustee as the debenture trustee for the Debenture Holders pursuant to the debenture trustee agreement dated 27 June 2019 entered into between the Issuer and the Debenture Trustee.

(C) One of the conditions of the Debenture Trust Deed is that each Guarantor, shall, both jointly and severally, irrevocably and unconditionally guarantee to the Debenture Trustee, on a continuing basis, the due and punctual discharge of the Secured Obligations in accordance with the Debenture Trust Deed and this Guarantee in favour of the Secured Parties.

(D) Pursuant to the aforesaid obligations of each of the Guarantors, and at the request of the Issuer, the Guarantors have agreed to execute this Guarantee in the manner hereinafter appearing.

Further, the Applicant has stated that the aforementioned Corporate Guarantee Deed, owing to certain restructuring i.e. merger of Orbis Capital Limited with Orbis Financial Corporation Limited, was amended and restated on 01.10.2020 wherein the name of "Orbis Capital Limited" stood replaced by "Orbis Trusteeship Services Private Limited". A perusal of the amended deed shows that the parties to the original guarantee deed acknowledged and affirmed that the abovementioned amendment did not result in novation of the original debenture trust deed.

6. Further, the relevant excerpt of the Corporate Guarantee Deed dated 25.02.2021 regarding the second tranche of NCD issued to the Principal Borrower with respect to which the CD had given a corporate guarantee has been annexed with the application and relevant excerpt of the same reads thus:

CORPORATE GUARANTEE

THIS CORPORATE GUARANTEE (Guarantee) is executed on this 25 day of February 2021 **(Execution Date)**, between:

1. **SIKKA PROMOTERS PRIVATE LIMITED,** private limited company incorporated and existing under the laws of India, with corporate identification number U74899DL1986PTC024571 and having its registered office at C - 60, Vikas Marg, Preet Vihar, New Delhi - 110009 (hereinafter referred to as the **Guarantor-1**, which expression shall, unless excluded by or repugnant to the context or meaning thereof, include its successors and assigns);

2. **SARA BUILDCON PRIVATE LIMITED,** a company incorporated under the provisions of the 1956 Act with corporate identification number U70200DL2010PTC207613 and having its registered office at C-60, Vikas Marg, Preet Vihar, Delhi 110009 (hereinafter referred as **Guarantor-2**, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in title and permitted assigns);

3. **INTEGRATED BUILDERS PRIVATE LIMITED,** a company incorporated under the provisions of the 1956 Act with corporate identification number U70200DL2010PTC199412 and having its registered office at Sikka House, C-60, Preet Vihar, Vikas Marg, Delhi - 110092 (hereinafter referred as **Guarantor-3**, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in title and permitted assigns);

4. **G.S. PROMOTERS PRIVATE LIMITED,** a company registered under the provisions of the 1956 Act with corporate identification number U74899DL1988PTC032652 and having its registered Office at C - 60, Vikas Marg, Preet Vihar, Delhi- 110092 (hereinafter referred as **Guarantor 4** which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in title and permitted assigns); and

5. **NOBAL BUILDTECH PRIVATE LIMITED,** a company registered under the provisions of the 1956 Act with corporate identification number U70102DL2013PTC258879 and having its registered Office at C - 60, Vikas Marg, Preet Vihar, Delhi- 110092 (hereinafter referred as **Guarantor 5** which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors in title and permitted assigns);

IN FAVOUR OF:

6. **ORBIS TRUSTEESHIP SERVICES PRIVATE LIMITED,** a company registered under the Companies Act, 2013 with corporate identification number U67190HR2020PTC086288 having its registered office at 4A, Ocus Technopolis Golf Club Road, Sector 54, Gurgaon, Haryana, India, 122002 acting as the debenture trustee for the Debenture Holder (hereinafter referred to as the **Debenture Trustee**, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns).

WHEREAS:

(A) Pursuant to a debenture trust deed dated 25 February 2021 (**Debenture Trust Deed**) entered into between the Guarantors, Kindle Infraheights Private Limited (**Issuer**), the Debenture Trustee and others, the Issuer has agreed to issue and allot 2000 (Two Thousand) secured, unlisted, redeemable, freely Transferable (*as defined below*) non-convertible debentures of a face value of INR 1,00,000 each (Indian Rupees One Lakh only) aggregating to INR 20,00,00,000 (Indian Rupees Twenty Crores only) in one or more tranches (**Debentures**) on the terms and conditions set out under the Debenture Trust Deed.

(B) In relation to the Debentures, the Issuer has appointed the Debenture Trustee as the debenture trustee for the Debenture Holders pursuant to the debenture trustee agreement dated 25 February 2021 entered into between the Issuer and the Debenture Trustee.

(C) One of the conditions of the Debenture Trust Deed is that each Guarantor, shall, both jointly and severally, irrevocably and unconditionally guarantee to the Debenture Trustee, on a continuing basis, the due and punctual discharge of the Secured Obligations in accordance with the Debenture Trust Deed and this Guarantee in favour of the Secured Parties.

(D) Pursuant to the aforesaid obligations of each of the Guarantors, and at the request of the Issuer, the Guarantors have agreed to execute this Guarantee in the manner hereinafter appearing.

7. The Applicant has also placed on record the demand notices dated 01.11.2021 whereby the Applicant invoked both the abovementioned corporate guarantee deeds executed by the guarantors, including the CD, in favour of the Applicant with respect to both the tranches of NCDs issued by the Principal Borrower and called upon the CD to make the payment of the defaulted amount within a period of 3 days from the date of the demand notices.

8. Initially, the Respondent represented by Mr. Gaurav Mitra, Advocate opposed the present application on the following grounds:

i. The Applicant has already preferred an application against the Principal Borrower i.e. CP(IB) No. 541/ND/2022 titled *Orbis Trusteeship Service Private Limited vs. Kindle Infraheights Private Limited* and therefore, the Applicant cannot trigger another CIRP against another Corporate Debtor for the same claim/ debt.

ii. The Applicant does not fall within the ambit of financial creditor for the reason that no amount was disbursed to it by the Applicant and that rather, the amount was disbursed by the Debenture Holders.

iii. The Application has been filed by the Applicant without proper authorization from the Debenture Holder to initiate CIRP against the Respondent.

iv. The Debenture Holders were having complete control over the bank accounts of the Principal Borrower and since the beginning, the Debenture Holder and the Applicant were exclusively managing the funds, finance, project and affairs of the Principal Borrower. Further, it was due to the mismanagement on the part of the Debenture Holder and the Applicant that the Principal Borrower was saddled with financial stress.

v. There are already ongoing legal disputes between the parties and that the Applicant has filed the present application to arm-twist the Respondent and the Principal Borrower to leverage bargaining position in negotiations with a view to recover more monies.

9. Subsequently, Mr. Deepak Khosla, Advocate, summarized the objection on behalf of Corporate Debtor to the following points: -

(i) The Trustee cannot be applicant in the present proceedings;

(ii) The Deponent/ Individual who signed the application/ affidavit had no authority to do so.

(iii) Even if the Deponent could be authorized to file the application, his affidavit is not as per law.

(iv) The vakalatnama filed on behalf of the Applicant is not in order.

10. To buttress the first plea i.e. the Trustee cannot be Applicant, Mr. Deepak Khosla, Ld. Counsel for the Applicant submitted that when the interest of any person/ party/ individual is represented by other, the representative need to indicate and specify his position by expressing, "on behalf of" or "in the name of" or "for". In all the eventualities/ situations, the representative need to disclose the particulars and details of the party/ persons/ individual represented by him. In his submission in the present case, in the application filed by Debenture Trustee, the name of Debenture Holder/ Creditor on whose behalf the proceedings are instituted is not disclosed. Having made reference to the notification dated 27.02.2019 issued by the Ministry of Corporate Affairs, Mr. Khosla submitted that might be the Central Government notified certain persons who may file an application for initiating CIRP against a Corporate Debtor before this Authority, on behalf of the Financial Creditors, but the notification cannot substitute the statute. According to him, irrespective of the statute, the Trustee can act for Financial Creditor, but he is required to disclose in the application that he is acting in representative capacity and the application is preferred on behalf of the financial creditor, which is not disclosed in the present application. According to Mr. Khosla, the deficiency in the application is that Orbit Trusteeship Services Private Limited which is only a Trustee could not have preferred the captioned application by projecting itself as Trustee.

11. Having referred to order dated 19.02.2024 in CP(IB) No. 143/ND/2022, Mr. Khosla espoused that the Applicant had preferred IA No. 6165/ND/2023 under Section 7(5)(b) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016, seeking rectification of Form- 1 (the petition) preferred under Section 7(1) and (2) of

the Code i.e. CP(IB) 143/ND/2022 but subsequently, it could withdraw the same. In his submission, from the development of filing IA 6165/ND/2023 by the Applicant, it is apparent that the Applicant itself is conscious of the fact that even when a Trustee can prefer an application under Section 7 (1) & (2) of IBC, 2016 on behalf of the Financial Creditor, it should be amplified in the application and the Trustee cannot project itself as Financial Creditor. To highlight that the Orbis Trusteeship Services Pvt. Ltd is acting for the benefit of Asia Pragati Strategic Investment Fund, Mr. Khosla made reference to Pg. 8 of the application. The text contained in the application referred to by Mr. Khosla reads thus:

> *"Orbis Trusteeship Services Private Limited (acting for the benefit of the Debenture Holders, i.e. Asia Pragati Strategic Investment Fund), hereby submits this application to initiate a corporate insolvency resolution process in the matter of Nobal Buikdtech Private Limited, being the corporate guarantor for secured financial debt advanced to Kindle Infraheights Pvt. Ltd. The Applicant is the Debenture Trustee and acts on behalf of an for the benefit of the Debenture Holder, Asia Pragati Strategic Investment Fund."*

12. It is emphasized by Mr. Khosla that it is FC alone who can file an application under Section 7 (1) & (2) of IBC, 2016 and even when the FC delegate his power to Trustee, the delegate should act as per law. He contended that the Trustee is not an assignee but is only a power of attorney holder. Having made reference to Form- 2 (prescribed under sub-rule (1) of Rule 9 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, Mr. Khosla argued that the consent was given by FC qua Orbis Trusteeship Services Pvt Ltd, by defining it as financial creditor, thus even the consent is also defective.

13. Coming to the second proposition espoused by him, the Ld. Counsel for the CD contended that the authorization in favour of Mr. Rejoy Basu could be executed only by one of the Directors qua Orbis Trusteeship Services Pvt. Ltd. viz. Mr. Vineet Parekh and not by Orbis Trusteeship Services Pvt. Ltd., thus there being no proper authorization in favour of Mr. Rejoy Basu, the captioned application preferred by him is non-est and deserves to be rejected on this ground alone. To take the issue further, the Ld. Counsel for CD made reference to Order 29 (Rule 1) of CPC. Having referred to the provision, he contended that in suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the Secretary or by any Director or other principal officer of the Corporation who is able to depose the facts of the case. In terms of the submission made by the Ld. Counsel, Mr. Rejoy Basu being not the Secretary or the Director or other principal officer qua the Applicant had no statutory authority or empowerment or locus to file the present application. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Uday Shankar Triyar vs Ram Kalewar Prasad Singh & Anr.*** [2006 (1) SCC 75] to contend that; the vakalatnama, species of power of attorney is an important document which enables and authorizes the pleader appearing for a litigant to do several acts as an agent which are binding on the litigants who is the principal; it is a document which creates special relationship between the lawyer and the client, which regulates and governs the extent of delegation of authority to the pleader and the terms and conditions governing such delegation; the vakalatnama should be properly filled/ attested/ accepted with care and caution; obtaining the signature of the litigant on blank vakalatnama and filing them subsequently should be

avoided. In the judgment relied upon on behalf of the CD, Hon'ble Supreme Court could take judicial notice of the defects routinely found in vakalatnamas filed in courts. Para 21 of the judgment reads thus: -

> *"**21.** We may at this juncture digress and express our concern in regard to the manner in which defective vakalatnamas are routinely filed in courts. Vakalatnama, a species of power of attorney, is an important document, which enables and authorises the pleader appearing for a litigant to do several acts as an agent, which are binding on the litigant who is the principal. It is a document which creates the special relationship between the lawyer and the client. It regulates and governs the extent of delegation of authority to the pleader and the terms and conditions governing such delegation. It should, therefore, be properly filled/attested/accepted with care and caution. Obtaining the signature of the litigant on blank vakalatnamas and filling them subsequently should be avoided. We may take judicial notice of the following defects routinely found in vakalatnamas filed in courts:*
>
> *(a) Failure to mention the name(s) of the person(s) executing the vakalatnama and leaving the relevant column blank.*
>
> *(b) Failure to disclose the name, designation or authority of the person executing the vakalatnama on behalf of the grantor (where the vakalatnama is signed on behalf of a company, society or body) by either affixing a seal or by mentioning the name and designation below the signature of the executant (and failure to annex a copy of such authority with the vakalatnama).*
>
> *(c) Failure on the part of the pleader in whose favour the vakalatnama is executed, to sign it in token of its acceptance.*
>
> *(d) Failure to identify the person executing the vakalatnama or failure to certify that the pleader has satisfied himself about the due execution of the vakalatnama.*
>
> *(e) Failure to mention the address of the pleader for purpose of service (in particular in cases of outstation counsel).*
>
> *(f) Where the vakalatnama is executed by someone for self and on behalf of someone else, failure to mention the fact that it is being so executed. For example, when a father and the minor children are parties, invariably there is a single signature of the father alone in the vakalatnama without any endorsement/statement that the signature is for "self and as guardian of his minor children". Similarly, where a firm and its partner, or a company and its director, or a trust and its trustee, or an organisation and its office-bearer, execute a vakalatnama, invariably there will be only one signature without even an endorsement that the signature is both*

in his/her personal capacity and as the person authorised to sign on behalf of the corporate body/firm/society/organisation.

(g) Where the vakalatnama is executed by a power-of-attorney holder of a party, failure to disclose that it is being executed by an attorney-holder and failure to annex a copy of the power of attorney.

(h) Where several persons sign a single vakalatnama, failure to affix the signatures seriatim, without mentioning their serial numbers or names in brackets. (Many a time it is not possible to know who have signed the vakalatnama where the signatures are illegible scrawls.)

(i) Pleaders engaged by a client, in turn, executing vakalatnamas in favour of other pleaders for appearing in the same matter or for filing an appeal or revision. (It is not uncommon in some areas for mofussil lawyers to obtain signature of a litigant on a vakalatnama and come to the seat of the High Court and engage a pleader for appearance in a higher court and execute a vakalatnama in favour of such pleader.)

We have referred to the above routine defects, as Registries/offices do not verify the vakalatnamas with the care and caution they deserve. Such failure many a time leads to avoidable complications at later stages, as in the present case. The need to issue appropriate instructions to the Registries/offices to properly check and verify the vakalatnamas filed requires emphasis. Be that as it may."

14. The contention on behalf of the CD with reference to the aforementioned judgment is that when the vakalatnama is executed by a power of attorney holder of a party, the failure to disclose that it is being executed by an attorney holder and failure to annex a copy of power of attorney render the vakalatnama as defective. With reference to vakalatnama available at pg. 887 of the paperbook, it is submitted that it does not contain the name of the person who signed the vakalatnama. The further pleas regarding vakalatnama are: signature on the vakalatnama is not correct as not Vineet Parekh but Orbis Trusteeship Services Private Limited has signed the vakalatnama; there is no authority in favour of Mr. Rejoy Basu to file the application.

15. In the process of taking his plea that the captioned application could not be preferred by an authorized person or the person who preferred the application is not authorized for the purpose, Mr. Khosla also made reference to the judgment of the Hon'ble Delhi High Court in ***Nibro Ltd. v. National Insurance Co. Ltd.*** [1990 SCC OnLine Del 65] to espouse that the question of authority to institute a suit on behalf of the company is not a technical matter and has far reaching effects. It often effects policy and finances of the company. Thus, unless a power to initiate a suit is specifically conferred on a particular Director, he has no authority to institute the suit on behalf of the company. Paras 22 to 25 of the judgment reads thus: -

> *"**22.** On the analysis of the judgments, it is clear that Order, 29, Rule 1 of the Code of Civil Procedure does not authorise persons mentioned therein to institute suits on behalf of the Corporation. It only authorises them to sign and verify the pleadings on behalf of the Corporation.*
> ***23.** In my view, the provisions of Companies Act, 1956 and particularly Sections 14, 26, 28 Schedule I, Table A and Section 291 are very clear.*
> ***24.** It is well-settled that under Section 291 of the Companies Act except where express provision is made that the powers of a company in respect of a particular matter are to be exercised by the company in general meeting—in all others cases the Board of Directors are entitled to exercise all its powers. Individual directors have such powers only as are vested in them by the Memorandum and Articles. It is true that ordinarily the court will not unsuit a person on account of technicalities. However, the question of authority to institute a suit on behalf of a company is not a technical matter. It has far-reaching effects. It often affects policy and finances of the company. Thus, unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of the company. Needless to say that such a power can be conferred by the Board of Directors only by passing a resolution in that regard.*
> ***25.** Chapter IV of the Delhi High Court (Original Side) Rules deal with the question of presentation of suits. Under this Rule, suit can be presented by a duly authorised agent or by an advocate duly appointed by him for the purpose. This authorization, in my view, in the case of a company can be given only after a decision to institute a suit is taken by the Board of*

Directors of the company. The Board of Directors may in turn authorise a particular director, principal officer or the secretary to institute a suit."

16. As the aforementioned judgment is with reference to O29.R1 of CPC, Mr. Khosla emphasized that the procedure before this Tribunal is guided by CPC and the Code of Civil Procedure is binding on this Tribunal. Qua the plea of lack of authorization in favour of Mr. Basu, Mr. Khosla made quick reference to the judgment of the Hon'ble Delhi High Court in ***Prem Kumar Gupta v. Bank of India*** [2015 SCC OnLine Del 8232] and the judgment of Hon'ble Supreme Court in ***State of Bombay v. Purushottam Jog Naik*** [(1952) 2 SCC 14]. The reference to the judgment in Prem Kumar Gupta (ibid) is made to espouse that only such authority which is conferred upon a person or institution can be exercised and any exercise of such authority which is not vested in someone cannot be held tenable. What is espoused on the basis of the judgment of the Hon'ble Supreme Court in *State of Bombay v. Purushottam Jog Naik (supra)* is that slipshod verification of the assertions made on affidavit may lead to rejection of the same and the verification should invariably be modelled on the lines of O19.R3 of the CPC, whether the Code applies in terms of not. Para 18 of the judgment reads thus: -

> *"**18.** We wish, however, to observe that the verification of the affidavits produced here is defective. The body of the affidavit discloses that certain matters were known to the Secretary who made the affidavit personally. The verification however states that everything was true to the best of his information and belief. We point this out as slipshod verifications of this type might well in a given case lead to a rejection of the affidavit. Verifications should invariably be modelled on the lines of Order 19 Rule 3 of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed. We draw attention to the remarks of Jenkins, C.J. and Woodroffe, J. in Padmabati Dasi v. Rasik Lal Dhar [Padmabati Dasi v. Rasik Lal Dhar, ILR (1910) 37*

Cal 259 : 1909 SCC OnLine Cal 104] and endorse the learned Judges' observations."

17. Reliance is also placed on the judgment of the Hon'ble Supreme Court in ***Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*** [1961 SCC OnLine SC 17] again to buttress the plea that Mr. Basu who was not duly authorized by the Applicant could not have filed the captioned application. Having referred to pg. 253 of the rejoinder i.e. the resolution 31.12.2021, the Ld. Counsel for the CD questioned the veracity of the same and espoused that this Authority/ Tribunal should ask for production of the minutes book of the Applicant to prove the genuity of the resolution. With reference to the resolution, Mr. Khosla also questioned the connotation of the word 'severally'. According to him, there is no such word like 'severally', which can be used to indicate the severable authority of Mayank Narang, CEO, Purvesh Pandit, Assistant Manager and Rejoy Basu, Executive. In his submission if the authority executed in favour of the three persons (ibid) could be exercised by them independently and individually, then the expression, 'severally' could be used in the resolution.

18. Although while making a submission in respect of Point No. II, Mr. Khosla also raised such submissions which could support his plea regarding the affidavit and vakalatnama being defective, but then again, he pressed the plea regarding defective affidavit as Point No. III. While espousing the plea, he could draw our attention to the affidavit dated 2nd February 2022 and pleaded: - (i) The affidavit does not contain the residential address of Mr. Rejoy Basu; (ii) In the affidavit, the Applicant is referred to as financial creditor, while it is only a Trustee of the financial creditor; (iii) The contents are declared as true

on the basis of personal knowledge and belief; (iv) the deponent is Hindu, so he should not have used the expression "solemnly" and should have in fact "sworn" the affidavit. Mr. Khosla further submitted that the deponent i.e. Mr. Rejoy Basu was working in Orbis Trusteeship Services Private Limited and not with the financial creditor which is the Debenture Holder and thus, could not be deemed to be authorised by the financial creditor to file the present application.

19. He placed reliance on the judgment of the Hon'ble Supreme Court in ***Janki Vashdeo Bhojwani & Ors. vs. IndusInd Bank & Ors.*** [Civil Appeal No. 6790 of 2003] wherein the Hon'ble Supreme Court held that a power of attorney holder has rendered some acts in pursuance of his power of attorney, he may depose for the principal in respect of such acts. However, such power of attorney holder cannot depose for the principal in respect of the matter which only the principal could have a personal knowledge of for which he was entitled to be cross- examined.

20. Mr. Khosla further submitted that the affidavit sworn by Mr. Rejoy Basu which is enclosed with the petition is defective as the same does not conform to the rules and laws laid down for swearing affidavits. He submitted that a deponent of an affidavit should depose from his knowledge and to buttress such plea, he drew attention of this Court to Chapter 12- "Oaths, Affirmations and Affidavits" of the Delhi High Court Rules, particularly to Rules 9, 10 and 11 thereof which reads thus: -

> *"**9.** Contents of affidavits—*
>
> *(i) Every affidavit containing any statement of facts shall be divided into paragraphs, and every paragraph shall be numbered*

consecutively, and, as nearly as may be, shall be confined to a distinct portion of the subject.

(ii) Every person, other than a plaintiff or defendant in a suit in which the application is made, making any affidavit, shall be described in such manner as will serve to identify him clearly: that is to say, by the statement of his full name, the name of his father, his profession or trade, and the place of his residence.

(iii) When the declarant in any affidavit speaks to any facts within his own knowledge, he must do so directly and positively, using the words 'I affirm' or 'I make oath any say'.

(iv) When the particular fact is not within the declarant's own knowledge, but is stated from information obtained from others, the declarant must use the expression 'I am informed',—and, if such be the case, should add 'and verily believe it to be true'—or he may state the source from which he received such information. When the statement rests on facts disclosed in documents, or copies of documents procured from any Court of Justice or other source, the declarant shall specify the source from which they were procured, and state his information or belief as to the truth of the facts disclosed in such documents."

*"**10.** Affidavits generally to be confined to facts which are within defendant's knowledge—*

(i) Attention is drawn to Order XIX, Rule 3, which lays down that affidavits shall be confined to such facts, as the deponent is able of his own knowledge to prove, except interlocutory applications (See Order XXXIX, Rules 6 to 10), on which statements of his belief may be admitted : provided that the grounds thereof are stated.

(ii) All interlineations, alterations or erasures in an affidavit shall be initialled by the person swearing it and the person before whom it is sworn. Such interlineations, alterations or erasures shall be made in such manner as not to obliterate or render it impossible or difficult to read the original matter. In case such matter has been obliterated so as to make it impossible or difficult to read it, it shall be re-written on the margin and initialled by the person before whom the affidavit is sworn."

*"**11**. Identification of deponent—Every person making an affidavit shall, if not personally known to the Court, Magistrate or other officer appointed to administer the oath or affirmation, be identified to such Court, Magistrate or officer by some person known to him; and such Court, Magistrate or officer shall specify, at the foot at the affidavit, the name and description of the person by whom the identification is made, as well*

as the time and place of the identification and of the making of the affidavit."

21. Mr. Khosla further placed reliance on the judgment dated 03.11.1983 of the Hon'ble Punjab and Haryana High Court in the matter of ***Mool Chand Wahi vs. National Paints P. Ltd. & Ors.*** [Company Petition No. 49 of 1981] whereby the Hon'ble High Court emphasized on the need for filing a duly sworn affidavit and further observed that if an affidavit is not in proper form, no value can be attached to it. Relevant paragraphs of the aforesaid judgment read thus: -

> *"**9.** Rule 18 says that every affidavit shall be signed by the deponent and sworn to in the manner prescribed by the Code or by the rules and practice of the Court. Order 19, Rule 3 of the Code of Civil Procedure says that affidavits shall be confined to such facts as the deponent is able to prove from his own knowledge except on interlocutory applications, on which statements of his belief may be admitted. From the aforesaid rules, it is evident that the petition for winding up is required to be accompanied by an affidavit in due form. It is well-settled that if an affidavit is not in due form, no value can be attached to it. In the above view, I am fortified by the observations in Bhupinder Singh's case (supra), wherein Tek Chand. J., after noticing Order 19, Rule 3(1), of the Code, observed as follows:—*
>
> > *"The words that the contents of the affidavit are true and correct to the best of my knowledge and belief carry no sanctity, and such a verification cannot be accepted. It has been held over and over again that affidavits must be either affirmed as true to knowledge or from information received provided the source of information is disclosed, or as to what the deponent believes to be true provided that the grounds for such belief were stated. Such affidavits where the verification lacks the essential requirements, are valueless."*
>
> *"**10.** In Padmabati Dasi v. Rasik Lal Dhar, (1910) ILR 37 Cal. 259, Jenkins C.J. and Woodroffee, J., observed:—*
>
> > *"We desire to impress on those who propose to rely on affidavits that, in future, the provisions of Order 19, Rule 3, must be strictly observed, and every affidavit should clearly express how much is a statement of the deponent's knowledge and how much is a statement of his belief, and the grounds of belief must be stated*

with sufficient particularity to enable the Court to Judge whether it would be safe to act on the deponent's belief."

*"**11.** This enunciation of the principle was endorsed by the Supreme Court in State of Bombay v. Puruthottam Jog Naik, (1952) 2 SCC 14 : AIR 1952 SC 317. There is a catena of decided cases supporting this proposition and among others, reference may be made to Durga Das v. Nalin Chandra NandanAIR 1934 Cal 694, Bisakha Rani Ghose v. Satish Chandra Roy, AIR 1956 Cal 496, and Dipendra Nath Sarkar v. State of Bihar, AIR 1962 Pat 101".*

*"**12.** The learned Judge, in view of the fact that the verification of the affidavit was not proper, ignored the affidavit filed by the petitioner in that case. In a petition for winding up it is mandatory to file an affidavit along with the petition. The purpose of the affidavit is that the allegations in the affidavit read with the petition are treated as substantive evidence. In case the petition is not accompanied by an affidavit, in view of the Rules mentioned above, it is no petition in the eye of law and consequently it is liable to be dismissed on this ground alone […]"*

According to the Ld. Counsel for the CD, the aforementioned judgment of the Single Judge Bench of the Hon'ble Punjab & Haryana High Court was upheld by the Division Bench of the Hon'ble High Court *vide* judgment dated 07.05.1986.

22. A reference is also made to the judgment dated 25.05.1966 of the Hon'ble Calcutta High Court in *re: Gaya Textiles Private Limited & Ors* [Company Petition No. 4 of 1996 reported in MANU/WB/0079/1968] wherein the Hon'ble High Court held that a defect in the verification of the affidavit cannot be cured by way of re- verification at a later stage and had thus, dismissed the petition therein due to defect in the verification.

23. The Ld. Counsel also made reference to the order passed by the Hon'ble High Court of Sind in the matter of ***Osborne Garrett & Co. Ltd vs. Raisi Jothabhoy & Ors.*** [MANU/SN/0017/1926] wherein the Hon'ble High Court was of the view that a plaint filed on behalf of a limited company which was

signed by the attorney instead of the plaintiff company's secretary/ director cannot be considered as properly signed or verified and granted leave to the plaintiff to file an amended and properly signed and verified plaint, and further directed the plaintiff to bear the cost of defendants for the hearing already held.

24. The next proposition evolved and espoused by Mr. Khosla, Ld. Counsel for the CD, was that the vakalatnama filed by the Ld. Counsel for the Petitioner is not in order on the ground that it has been executed by a person who was not authorized to do so by the financial creditor. He further espoused that in the vakalatnama given on behalf of Orbis Trusteeship Services Private Limited i.e., the Petitioner, neither the name of the person giving the signature nor his designation is mentioned. Mr. Khosla contended that when a vakalatnama is given on behalf of a body corporate, it should be executed by a Director, Secretary or such managerial personnel and their name and designation should be clearly mentioned. He referred to the judgment dated 08.10.2009 passed by the Hon'ble Delhi High Court in the matter of ***Deepak Khosla vs. Union of India*** [WPC No. 7651/2009] wherein the Hon'ble High Court in dealing with the issue of irregularities in filing of vakalatnamas issued directions to the High Court's registry for compliance of directions given by the Hon'ble Supreme Court in *Uday Shankar Triyar vs. Ram Kalewar Prasad Singh (supra).* Relevant excerpt of the aforementioned judgment of the Hon'ble Delhi High Court reads thus:

> *"**12.** Pertaining to Vakalatnamas executed not by the Principal himself but by some person claiming to appoint or give authority on this behalf, Rule 1, Part-A of Chapter 16 of the Delhi High Court Rules, inter alia, stipulates—*

(1) Proof of attorney to act to be executed by the principal—Every appointment of a pleader to act shall contain in full the name of the person, or, where there are more than one, of every person who thereby appoints the pleader to act on his behalf, and shall be executed by every such person.

(2) Proof required "when power of attorney not executed by the principal—When such appointment or power is not executed by the principal himself, but by some person claiming to appoint or give authority on his behalf, the pleader will not be recognized by the Court without proof that such person was duly authorized by the principal to execute such appointment or power"

***13.** We direct that henceforth while scrutinizing the Vakalatnamas filed, be it in the Registry of this Court, the Subordinate Courts in Delhi or the Tribunals, Authorities and Foras in Delhi, failure/defect in the Vakalatnamas, noted in sub-paras 'a' to 'e' of Para 21 of the decision of the Supreme Court in Uday Shankar's case (supra), shall be treated as a deficiency in the execution of the Vakalatnamas making liable the said Vakalatnama to be returned. Further, in the situation contemplated by sub paras 'f' to 'i' of Para 21 of the decision in Uday Shankar's case (supra), Vakalatnamas not executed in the manner indicated in the said sub-paras shall also be treated as a deficiency in the execution of the Vakalatnama, making liable said Vakalatnama to be returned."*

25. Mr. Khosla further drew our attention to the Circular No. 13/Rules/DHC dated 26.10.2009 issued by the Hon'ble Delhi High Court which was issued pursuant to the aforesaid judgment in *Deepak Khosla vs. Union of India (supra)*. In the said circular, it was inter alia directed that the name of the person executing the vakalatnama should be clearly mentioned and that in case of vakalatnama has been signed on behalf of a body corporate, the name designation or authority of the person executing the vakalatnama on behalf of the grantor should be disclosed by either affixing a seal or mentioning the name and designation below the signature of the executant, and that further in such cases, a true copy of the resolution/ minutes of the meeting authorizing such a person to represent the company/ body corporate should be affixed with the vakalatnama.

26. On behalf of the Applicant, Mr. Dhawan opposed the plea taken by the Ld. Counsel for the CD that the application filed by the Debenture Trustee was defective and placed reliance on the notification dated 27.02.2019 issued by Ministry of Corporate Affairs whereby it was stated that a Debenture Trustee could file an application as financial creditor on behalf of the Debenture Holder. To buttress his plea, he also placed reliance on the order dated 27.03.2023 passed by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 1071 of 2022 titled *Orbis Trusteeship Private Limited vs. Nobal Buildtech Private Limited*.

ANALYSIS:

27. With regard to the contention raised by the Respondent that the Applicant was not a financial creditor for the purposes of the Code since the defaulted amount was given by the Debenture Holder to the Principal Borrower and that the Applicant was only a Debenture Trustee in the said transaction, at the outset a reference need to be made to Section 71(5) of the Companies Act, 2013, in terms of which no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding 500 for the subscription of its debentures, unless the company has before such issue or offer appointed one or more debenture trustee and the conditions governing the appointment of such trustee shall be such that as may be prescribed. In terms of the provisions of sub-section (6) of Section 71 of the Act, a debenture trustee shall take steps to protect the interests of debenture holders and redress their grievances in accordance with such rules as may be prescribed. Thus, apparently in terms of the aforementioned statutory

provisions, the debenture trustee has an independent right and obligation to take steps in respect of the interest of the debenture holders and redress their grievance. The Section 71(5) & (6) of the Companies Act, 2013 reads thus: -

> *"**71. Debentures.—***
> *[…]*
> *(5) No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.*
> *(6) A debenture trustee shall take steps to protect the interests of the debenture-holders and redress their grievances in accordance with such rules as may be prescribed."*

27.1 The provision akin to aforementioned sub-section is also contained in clause (n) of sub-rule (3) of Rule 18 of Companies (Share Capital & Debentures) Rules, 2014. The rule 18(3) reads thus: -

> *"**18. Debentures-***
> *[…]*
> *(3) It shall be the duty of every debenture trustee to—*
> *(a) satisfy himself that the letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;*
> *(b) satisfy himself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders;*
> *(c) call for periodical status or performance reports from the company;*
> *(d) communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee therefor;*
> *(e) appoint a nominee director on the Board of the company in the event of— (i) two consecutive defaults in payment of interest to the debenture holders; or (ii) default in creation of security for debentures; or (iii) default in redemption of debentures.*
> *(f) ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach;*
> *(g) inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed;*

(h) ensure the implementation of the conditions regarding creation of security for the debentures, if any, and debenture redemption reserve;
(i) ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances except those which are specifically agreed to by the debenture holders;
(j) do such acts as are necessary in the event the security becomes enforceable;
(k) call for reports on the utilization of funds raised by the issue of debentures;
(l) take steps to convene a meeting of the holders of debentures as and when such meeting is required to be held;
(m) ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures;
(n) perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders"

(Emphasis Supplied)

28. Furthermore, under Section 21(6A) of the Code, a provision has been made for appointment of a trustee or agent to act as authorized representative for all the financial creditors in the CoC and that such trustee/ agent shall act on behalf of all the financial creditors. The said provision reads thus: -

"21. Committee of creditors.—

[…]

(6A) Where a financial debt—

(a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors"

[…]

and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share."

Thus, the Code itself contains provisions for appointment of a trustee with respect to a financial debt who shall act on behalf of the concerned financial creditors.

29. It is relevant to refer to the order dated 27.03.2023 passed by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 1071 of 2022 titled *Orbis Trusteeship Private Limited vs. Nobal Buildtech Private Limited*. The Hon'ble NCLAT while dealing with the same issue mentioned above had taken into consideration a notification dated 27.02.2019 issued by the Ministry of Corporate Affairs whereby it was stated that a Debenture Trustee could file an application on behalf of the financial creditor. Relevant excerpt of the aforesaid order of Hon'ble NCLAT is extracted herein below:

> *"This appeal is directed against the order dated 02.06.2022 passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench) in (I.B.) 143 (ND)/2022 by which an application filed under Section 7 by the Appellant (Orbis Trusteeship Service Pvt. Ltd.) as a Debenture Trustee on behalf of the Debenture Holders, for the Resolution of a debt of Rs. 255,07,26,925/- as on 02.02.2020 against Nobal Buildtech Private Ltd. (Corporate Debtor) has been dismissed on the ground that the application filed at the instance of the Appellant was not maintainable as the amount was not disbursed by the Appellant but by the Debenture Holders.*
>
> *3. Since the issue involved in this case is in a very narrow compass that is as to whether the application under Section 7, preferred at the instance of the Appellant being the Debenture Trustee is maintainable or not, Counsel for the Appellant has drawn our attention to a notification dated 27.02.2019 issued by the Ministry of Corporate Affairs as per which the Trustee (including Debenture Trustee) can file an application on behalf of the Financial Creditor. The said notification is reproduced as under: -*

*"**MINISTRY OF CORPORATE AFFAIRS***
NOTIFICATION
New Delhi, the 27th February, 2019

***S.O. 1091(E)**- In exercise of the powers conferred by sub-section (1) of section 7 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby notifies following persons who may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, on behalf of the financial creditor:-*

(i) a guardian;

(ii) an executor or administrator of an estate of a financial creditor,

(iii) a trustee (including a debenture trustee); and

(v) a person duly authorised by the Board of Directors of a Company.

[F. No. 30/25/2018-Insolvency Section]

GYANESHWAR KUMAR SINGH, Jt. Secy."

4. Counsel for the Respondent has been fair enough to concede about the existence of the aforesaid notification.

5. Thus, in view of the aforesaid facts and circumstances, the issue is no more res-integra because of the notification dated 27.02.2019.

6. In view of the aforesaid facts and circumstances the present appeal is thus allowed. The 'impugned order' is set aside. The matter is remanded back to the 'Adjudicating Authority' to decide the case on merits. The parties are directed to appear before the 'Tribunal' on 1st May, 2023."

30. Further, it is also relevant to refer to the letter of authorization dated 22.10.2021 given by the Debenture Holder in favour of the Applicant/ Debenture Trustee which includes the authority to make submissions/ applications before relevant regulatory/ statutory/ governmental authorities and to invoke guarantees given to the Debenture Holder under IBC, 2016 as well as other applicable laws. The extract of the aforementioned authorization letter is reproduced here below: -

ASIA ◇ PRAGATI

Asia Pragati Strategic Investment Fund
811, 8th Floor, Ansal Bhawan, 16 K.G. Marg,
New Delhi - 110001
contact@asiapragati.com

LETTER OF AUTHORISATION

By this document, it is hereby acknowledged, that I/ We the undersigned ("**Client**"), do hereby grant specific authorisation to Orbis Trusteeship Services Private Limited, its representatives and permitted assigns ("**Orbis**"), for purposes listed herewith in this letter of authorisation ("**Authorisation**"):

A. This Authorisation is granted to Orbis, in its capacity as the acting representative of the Debenture Holders under: (i) the original terms of the Transaction Documents and as restated and amended subsequently, in relation to the Secured Obligations of the Issuer created under the terms of the Debenture Trust Deed, first dated 27 June 2019, and amended and restated on 30 September 2020, towards the issuance of Debentures ("**Issue 1**"); and (ii) the terms of the Transaction Documents in relation to the Secured Obligations of the Issuer created under the terms of the Debenture Trust Deed dated 25 February 2021, towards the second and additional issuance of Debentures ("**Issue 2**").

B. Orbis shall have the authority to discuss, execute, issue, release and obtain, any note, notice, letter or such other document as may be specifically required by the Client in writing, including towards enforcing Security under Issue 1 and Issue 2, in accordance with the terms of their respective Transaction Documents and invoking respective Guarantees under IBC and Applicable Laws, with the Issuer and such other persons as may be directed and agreed in writing by the Client.

C. Orbis shall further have the authority to disclose information pertaining to Issue 1 and Issue 2, including in relation to the Debentures, Security, Dispute, Event of Default under the terms of their respective Transaction Documents and such other information pertaining to the Issue, and share copies of documents, including the Transaction Documents, to the extent necessary and as agreed in writing by the Client.

D. Orbis shall have the authority to contact, make submissions and applications to relevant regulatory/ statutory/ governmental authorities with the necessary information, as may be required to carry out and perform specific authorities granted herein, in consultation with the Client.

E. This authority shall also include any incidental acts that are reasonably required by Orbis to carry out and perform the specific authorities granted herein, in consultation with the Client.

F. Further, Orbis shall have the authority to discuss and disclose information pertaining to the Escrow Account, account with IndusInd Bank and such other facility information pertaining to the Debentures under Issue 1 and Issue 2, to the extent necessary and as agreed in writing by the Client.

G. This authority is in addition to any authority granted to Orbis under the terms of the respective Transaction Documents and does not limit any right available to it under its terms.

H. Capitalised terms used herein and not otherwise defined shall have the meanings given to them under the respective Transaction Documents.

31. Therefore, in view of the aforesaid notification of the Ministry of Corporate Affairs, reproduced in the order of the Hon'ble NCLAT, the plea raised on behalf of the Corporate Debtor that the present proceedings initiated by Debenture Trustee are not maintainable cannot be countenanced. Furthermore, the aforementioned authorization letter issued by the Debenture Holder in favour of the Debenture Trustee clearly shows that the

Debenture Trustee was competent to file the present application under Section 7 of the Code before this Tribunal.

32. It could also be one of the contentions raised on behalf of the Respondent that the Debenture Holder and the Applicant were in control and management of the finances as well as affairs of the Principal Borrower and that such control led to mismanagement of the Principal Borrower's finances. In this regard, it is relevant to refer to the order dated 11.09.2024 passed by this court in IB-541/ND/2022 where the application filed under Section 7 of the Code against the Principal Borrower was admitted. In passing the said order, this court had rejected the plea raised by the Principal Borrower that the default in debt could not be attributed to it since it was the Applicant/ Debenture Trustee which operated the escrow account. Relevant excerpt of the order dated 11.09.2024 reads thus: -

> *"**17.** Having drawn our attention to Exhibit-34 to Rejoinder i.e Escrow Account Agreement, the Ld. Counsel for the Corporate Debtor submitted that since in terms of Clause 3.2 of the Agreement, it was the Applicant i.e. Debenture Trustee who was operating the escrow account, the default occurred in redeeming non-convertible debentures cannot be attributed to the Respondent/CD. The Clause 3.2 relied upon by him reads thus:-*
>
> > *"**3.2 Operation of the Escrow Accounts***
> >
> > *(a) Each of KIPL, GPPL, and NBPL hereby unconditionally and irrevocably delegates to the Escrow Agent the authority to operate the Escrow Accounts in accordance with the terms of this Agreement, Applicable Law, and in accordance with the instructions of the Debenture Trustee (acting at all times in accordance with the Transaction Documents). It is hereby clarified that each of the RERA Designated Accounts shall be operated in accordance with the terms of this Agreement and the RERA Act. Save as provided .for in this Agreement and in the RERA Act no Person shall be entitled to issue instructions in relation to any of the RERA Designated Accounts.*

(b) All transfers from the Escrow Accounts shall be made by the Escrow Agent in India only and the Escrow Agent is not permitted to make any transfers from the Escrow Account in any other jurisdiction, unless such transfer to another jurisdiction is permitted by Applicable Law. Nothwithstanding anything contained in this Agreement, in the event any instruction or directions received by the Escrow Agent from the Uttar Pradesh Real Estate Regulatory Authority pertaining to any of the RERA Designated Accounts, such instruction or direction issued by the Uttar Pradesh Real Estate Regulatory Authority shall prevail over any conflicting instructions provided by the Promoter. The Escrow Agent shall promptly, a having received any such instruction or direction from the Uttar Pradesh Real Estate Regulatory Authority, inform the Debenture Trustee and the Promoter of such instruction or direction.

(c) The Promoters shall only be entitled to issue instructions to the Escrow Agent in relation to the RERA Designated Accounts and for the limited purpose of transferring any and all sums of money from the RERA Designated Accounts to the corresponding Debenture Trustee Escrow Account. Any such. instruction issued by any Promoter shall be in the format as set out in Schedule III hereto and shall mandatorily be accompanied by (i) a certificate in the format as prescribed under the RERA Act from the project engineer of the specific RERA Project: (ii) a certificate in the format as prescribed under the RERA Act from the project architect of the specific RERA Project; and (iii) a certificate in the format as prescribed under the RERA Act from the chartered account of the specific RERA Project. It is clarified that any sum of money withdrawn from any RERA Designated Account shall mandatorily be transferred to the corresponding Debenture Trustee Escrow Account only.

(d) It is clarified that neither the Promoters nor any of their Affiliates will be permitted to issue any instructions or operate in any manner whatsoever the Debenture Trustee Escrow Accounts or the Collection Escrow Accounts. Any transfer of sums from the Collection Escrow Accounts to the corresponding RERA Designated Account and the corresponding Debenture Trustee Escrow Account will strictly be in accordance with this Agreement and Schedule II hereto. Any transfer of sums from the Debenture Trustee Escrow Accounts will strictly be in accordance with the

instructions issued solely by the Debenture Trustee (acting at all times in accordance with the Transaction Documents) to the Escrow Agent.

(e) Prior to the occurrence of an Event of Default, the names of the authorised signatories of each of KIPL, GPPL, and NBPL for the sole purpose of issuing instructions in relation to withdrawal of sums from the RERA Designated Accounts to the corresponding Debenture Trustee Escrow Account and their specimen signatures for the purpose of standing instructions, notices and other related instructions to the Account Bank or to the Escrow Agent for this limited purpose shall be in accordance with the resolutions passed by the board of directors of each of the Promoters and annexed to this Agreement hereto.

Notwithstanding anything to the contrary stated in this Agreement, upon the occurrence of an Event of Default under the Debenture Trust Deed, in case of each of the RERA Designated Accounts, the Account Bank shall, immediately upon being informed of the occurrence of any such Event of Default by the Debenture Trustee (acting at all times in accordance with the terms of the Transaction Documents) and after having received a board resolution passed by the respective Promoter in this regard, revoke the authority granted to the existing signatories of each of KIPL, GPPL, and NBPL under Clause 3.2(e) above. On and from the occurrence of an Event of Default, each of the RERA Designated Accounts shall be operated solely by such director or key managerial personnel of the Promoter that is in accordance with the Transaction Documents, and each Promoter undertakes to submit a board resolution to the Account Bank and to the Escrow Agent in this regard. The signatory of each of the Promoters authorised to operate the RERA Designated Accounts upon the occurrence of an event of default and thereafter shall issue instructions substantially in the form set out in Schedule III hereto. On and from the occurrence of an Event of Default, the Escrow Agent and the Account Bank shall act on the sole instruction of only the authorised signatory of the Promoters so specified in the board resolutions passed by the Promoters upon the occurrence of an Event of Default, and the Escrow Agent and the Account Bank , shall in no way be bound by or act as per any other instructions received from any other Person, including any

other signatory of KIPL, GPPL or NBPL, their Affiliates or their authorised representatives.

(f) The name of the authorised signatory of the Debenture Trustee for the purpose Debenture of issuing instructions in relation to withdrawal of sums from each of the Debenture Trustee Escrow Accounts and his specimen signature for the purpose of standing instructions, notices and other related instructions to the Account Bank or to the Escrow Agent shall be in accordance with the resolution passed by the Debenture Trustee and annexed to this Agreement hereto.

(g) The Debenture Trustee and the Promoters undertake to give the Escrow Agent. 5 (five) clear Business Days' notice in writing of any change to their authorised signatories.

(h) Amounts shall only be withdrawn from the Escrow Accounts to the extent such withdrawal does not cause any of the Escrow Accounts to have a negative balance and the Account Bank shall not have any obligation to monitor any of the Escrow Accounts for this purpose or incur any liability whatsoever from any non-distribution in such circumstances. Notwithstanding the above, the Account Bank shall be liable in an event of wilful default, gross negligence. and fraud.

(i) Upon the receipt of an occupancy certificate in relation to the Sikkd Kaamna Project, the Account Bank shall. and the Escrow Agent shall procure that the Account Bank does, transfer all funds lying, from time to time, to the credit of the KIPL RERA Designated Account and the KIPL Collection Escrow Account to the KIPL Debenture Trustee Escrow Account on a daily auto-sweep basis at the close of each Business Day during the term of this Agreement. It is hereby clarified that required instruction shall be provided by the Debenture Trustee to the Account Bank for activating such auto-sweep. The Account Bank and the Escrow Agent.shall not take instructions from any other Person or entity in this regard. Upon the transfer of all funds from the KIPL RERA Designated Account and the KIPL Collection Escrow Account to the KIPL Debenture Trustee Escrow Account, the Debenture Trustee, upon receiving such request from KIPL and subject to clause 7.6 below, shall be entitled to (but not obliged to) issue a confirmation to the Account Bank to close the KIPL RERA Designated Account only. It is hereby clarified that upon the closure of the KIPL RERA Designated

Account. all amounts lying, from time to time, to the credit of the KIPL Collection Escrow Account shall be transferred only to the KIPL Debenture Trustee Escrow Account on a daily auto-sweep basis at the close of each Business Day during the term of this Agreement.

(j) Upon the receipt of an occupancy certificate in relation to the Sikka Karmic Project, the Account Bank shall, and the Escrow Agent shall procure that the Bank does, transfer all funds lying, from time to time, to the credit of the GGPL RERA Designated Account and the GPPL Collection Escrow Account to the GPPL Debenture Trustee Escrow Account on a daily auto-sweep basis at the close of each Business Day during the term of this Agreement. It is hereby clarified that required instruction shall be provided by the Debenture Trustee to the Account Bank for activating such auto-sweep. The Account Bonk and the Escrow Agent shall not take instructions from any other Person or entity in this regard. Upon the transfer of all funds from the GPPL RERA Designated Account and the GPPL Collection Escrow Account to the GPPL Debenture Trustee Escrow Account, the Debenture Trustee, upon receiving such request from GPPL, and subject to clause 7.6 below, shall be entitled to (but not obliged to) issue a confirmation to the Account Bank to close the GPPL RERA Designated Account only. It is hereby clarified that upon the closure of the GPPL RERA Designated Account, all amounts lying, from time to time, to the credit of the GPPL Collection Escrow Account shall be transferred only to the GPPL Debenture Trustee Escrow Account on a daily auto-sweep basis at the close of each Business Day during the term of this Agreement.

(k) Upon the receipt of an occupancy certificate in relation to the Sikka Kirat Project, the Account Bank shall, and the Escrow Agent shall procure that the Account Bank does, transfer all funds lying, from time to time, to the credit of the NBPL RERA Designated Account and the NBPL Collection Escrow Account to the NBPL Debenture Trustee Escrow Account on a daily auto-sweep basis at the close of each Business Day during the term of this Agreement. It is hereby clarified that required instruction shall be provided by the Debenture Trustee to the Account Bank for activating such auto-sweep. The Account Bank and the Escrow Agent shall not take instructions from any other Person or entity in this regard. Upon the transfer of all funds from the NBPL RERA

Designated Account and the NBPL Collection Escrow Account to the NBPL Debenture Trustee Escrow Account, the Debenture Trustee, upon receiving such request from NBPL, and subject to clause 7.6 below, shall be entitled to (but not obliged to) issue a confirmation to the Account Bank to close the NBPL RERA Designated Account only. It is hereby clarified that upon the closure of the NBPL RERA Designated Account, all amounts lying, from time to time, to the credit of the NBPL Collection Escrow Account shall be transferred only to the NBPL Debenture Trustee Escrow Account on a daily auto-sweep basis at the close of each Business Day during the term of this Agreement."

*"**18.** In terms of the aforementioned clause, the power to operate escrow account was given to some agent nominated by the Applicant, but merely because certain person nominated by the bankruptcy trustee is authorised to operate the account, it cannot be said that there is no default on behalf of the Corporate Debtor as it is not the case of the Corporate Debtor that there was sufficient amount available in the account to redeem the debentures on due dates. Thus, we do not find any force in the plea on behalf of the Corporate Debtor that merely because the Applicant was allowed to nominate a person to operate the escrow account, the present application is not maintainable for the reasons that the operator of account could not make the payment."*

33. In terms of the aforesaid order of this court, the contention raised by the CD that the default in repayment occurred to mismanagement on the part of the Applicant in managing the finances of the Principal Borrower is not tenable.

34. The Ld. Counsel for the CD vehemently contended that there were irregularities/ defects in the affidavit enclosed with the application as well as in the execution of vakalatnama on behalf of the Applicant. The Ld. Counsel emphasised that such irregularities/ defects violate the provisions of the CPC thus, the petition is liable to be dismissed. In this regard, it need to be noted as to whether the proceedings before this Authority/ Tribunal is strictly governed by the Code of Civil Procedure, 1908. As per Section 424(1) of the

Companies Act, 2013, this Tribunal is not bound by CPC but shall be guided by principles of natural justice. The said provision reads thus: -

> *"**Section 424. Procedure before Tribunal and Appellate Tribunal.—** (1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act or of the Insolvency and Bankruptcy Code, 2016 (31 of 2016)] and of any rules made hereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure."*
>
> (Emphasis Supplied)

35. It is also relevant here to refer to the order passed by Hon'ble NCLAT in ***G. Rajendran v. Naargo Industries (P) Ltd.*** [2023 SCC OnLine NCLAT 622], wherein the Hon'ble Appellate Tribunal made the following observations on the applicability of CPC in proceedings before NCLT: -

> *"**54.** To be noted, that when a 'civil suit', is filed, all the provisions of the 'Civil Procedure Code', 1908 will apply, pertaining to the 'conduct of the proceedings before Court'. However, in respect of proceedings filed under the 'Companies Act, 2013', the procedure, to be followed, shall be as 'specified in the Rules'.*
>
> ***55.** As a matter of fact, any order, passed by the Tribunal/Appellate Tribunal, shall be enforced as a 'Decree', passed by the 'Court'. The fetters of 'Civil Procedure Code', are not binding on the 'Tribunal', and the 'Appellate Tribunal', but they are guided by the 'Principles of Natural Justice'.*
>
> ***56.** Rule 20 of 'NCLT' Rules, 2016, specified the 'procedure', to be followed, for 'institution of proceedings', 'petition', Appeals etc. Rule 23 of 'NCLT' Rules, 2016, deals with the 'presentation of petition or Appeal'.*
>
> ***57.** It must be borne in mind, that 'Orders' and 'Rules' of 'Civil Procedure Code', shall not be made, in matters under the Companies Act, 2013. No wonder, that 'Tribunal', and the 'Appellate Tribunal', being 'creatures of statutes', are required, to adhere to the 'Principle of Natural Justice', 'in proceedings', before it."*

36. Regarding the contention raised by Mr. Khosla that in the vakalatnama filed on behalf of the Petitioner, there is no mention of name and designation

of the signatory on behalf of Orbis Trusteeship Services Private Limited, it is noted that the signature affixed on the affidavit annexed with the petition i.e., that of Mr. Rejoy Basu are same as affixed on the vakalatnama and apparently the affidavit contains the particulars of Mr. Rejoy Basu. Although, the contention raised by Mr. Khosla about the infirmities in vakalatnama is not without basis and we appreciate the pain taken by him in collecting the material to buttress the plea, but once this Tribunal is able to ascertain the identity of the person executing the document, it need not go into the issue of whether the absence of the name and designation of the signatory would make a document invalid or not. At this stage, we may also take note of explanation below third proviso to Section 7(1) of IBC, 2016, which in terms of the judgment of the Hon'ble Supreme Court in ***Pioneer Urban Land & Infrastructure vs. Union of India*** [AIR 2019 SC 4055] has statutory flavour and need to be read as part of the statute. In terms of the explanation, for the purpose of Section 7(1) (ibid), a default includes a default in respect of a financial debt owed not only to the Applicant/ FC, but to any Financial Creditor of the Corporate Debtor. The said explanation reads thus:

> *"Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor. (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed. (3) The financial creditor shall, along with the application furnish— (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified; (b) the name of the resolution professional proposed to act as an interim resolution professional; and (c) any other information as may be specified by the Board."*

36.1 Apparently, the strict rules applicable to the pleadings/ procedure before civil courts may not be applied to the proceedings before this Adjudicating Authority under the IBC and here in these proceedings, a person can initiate the CIRP even qua the default in respect of financial debt owed to any other financial creditor of the Corporate Debtor. The reason is simple i.e. the objective of the IBC is not to provide redressal or remedial measure qua the grievance of the creditor against the debtor in the matter of non-repayment of the amount of debt but is to nourish wider public interest in resolving corporate insolvencies. It is misconception that the object of the Code is recovery of monies/ dues outstanding. In a way, the IBC is beneficial legislation. Thus, when a person, individual or otherwise, is associated with the process of initiation of CIRP, does not pursue his individual cause or remedy and only nourish the public interest in resolving the corporate insolvencies, the principles applicable to non-suit a plaintiff/ petitioner on technicalities may not be applied to Applicant/ Petitioner associated with the proceedings under the IBC.

37. The proposition regarding requirement of examination of the documents like vakalatnama by this Tribunal in detail is fortified by the view taken in a catena of judgments wherein it has been held that this Tribunal is not required to check the veracity of all the documents presented before it in summary proceedings and that any view on the contrary would defeat an important objective of this Code i.e., speedy disposal of cases. This principle was enunciated by the Hon'ble NCLAT in the matter of ***Gokul Exim Pvt. Ltd. v. Grid India Power Cable Pvt. Ltd***. [MANU/NL/1259/2022] wherein the Hon'ble Appellate Tribunal held that: -

"9. The Respondent has alleged that invoices have been forged by the Applicant to extort money from the Respondent and the Respondent has placed on record certain document which shows that vehicles that used to carry the goods does not have the capacity to carry such quantity of goods which was denied by the applicant and stated that the Corporate Debtor has its own transportation carrier. The amount of debt due, if any, cannot be ascertained as long as the authenticity of invoices is proved. The dispute with respect to forgery of invoices cannot be decided by this Adjudicating Authority. It is settled law that proceedings before NCLT are summary in nature and adversarial evidence cannot be led and appraised by this Tribunal. This Adjudicating Authority is not expected to ascertain the veracity of invoices raised in a summary proceeding, if the Tribunal starts adjudicating these types of issues, then the purpose of enacting the statute for speedy disposal by the mechanism will be defeated, therefore, the Applicant may explore other legal remedies."

(Emphasis Supplied)

38. Further, the Hon'ble NCLAT in ***Rakesh Kumar vs. Flourish Paper & Chemicals Ltd.*** [Company Appeal (AT)(Insolvency) No. 1161 of 2022] held that the Adjudicating Authority cannot adjudicate upon disputes surrounding claims and counter- claims in their summary jurisdiction. Relevant extract of the said order reads thus: -

"It has also been rightly observed that disputes surrounding claims and counter-claims cannot be adjudicated or determined by the Adjudicating Authority given their summary jurisdiction."

39. In the present case, once this Tribunal has formed a view that the Debenture Trustee was competent to file an application as a financial creditor under Section 7 of the Code on behalf of the Debenture Holder, any plea that a person working with the Debenture Trustee could not be said to be a person authorized by the financial creditor to file the applicant is not tenable.

40. Here, it would not be out of context to note that as far as this Tribunal is concerned, not only a lawyer alone but even a Chartered Accountants or Company Secretaries or Cost Accountants or any other person may be

authorized by party to any proceeding before this Tribunal or Appellate Tribunal. The provisions contained in Section 432 of the Companies Act, 2013 in this regard reads thus: -

> *"**432. Right to legal representation**.— A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be."*

41. The term 'vakalatnama' is derived from two words: 'vakalat' which means authority or power of attorney and 'nama' which means a document. It is a legal document in India that authorizes an advocate to represent a party in the court. The meaning of vakalatnama is defined in the Advocates Welfare Fund Act, 2001 under which the vakalatnama includes a memorandum of appearance or any other document which an advocate is empowered to appear or plead before any court. Thus, the vakalatnama denote relationship between an advocate and the person authorizing him. The contents of vakalatnama and the mention of particulars thereon properly may be an issue to be examined in depth, but as far as the representation of party before this Tribunal is concerned, besides Section 432 of Companies Act, 2013, also Rule 45 and 119 of NCLT Rules, 2016 deal with the same. In terms of Rule 45(1), every party may appear before this Tribunal in person or through an authorized representative duly authorized in writing in this behalf. Thus, the representative before this Tribunal, including the lawyer, only need to have an authorization in writing to appear before this Tribunal. The Rules 45 and 119 of the NCLT Rules, 2016 read thus:

*"**45. Rights of a party to appear before the Tribunal.**- (1) Every party may appear before a Tribunal in person or through an authorised representative, duly authorised in writing in this behalf.*

(2) The authorised representative shall make an appearance through the filing of Vakalatnama or Memorandum of Appearance in Form No. NCLT. 12 representing the respective parties to the proceedings.

(3) The Central Government, the Regional Director or the Registrar of Companies or Official Liquidator may authorise an officer or an Advocate to represent in the proceedings before the Tribunal.

(4) The officer authorised by the Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator shall be an officer not below the rank of Junior Time Scale or company prosecutor.

(5) During any proceedings before the Tribunal, it may for the purpose of its knowledge, call upon the Registrar of Companies to submit information on the affairs of the company on the basis of information available in the MCA21 portal. Reasons for such directions shall be recorded in writing.

(6) There shall be no audio or video recording of the Bench proceedings by the parties or their authorised representatives."

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*"**119. Appearance of authorised representative.**- Subject to as hereinafter provided, no legal practitioner or authorised representative shall be entitled to appear and act, in any proceeding before the Tribunal unless he files into Tribunal vakalatnama or Memorandum of Appearance as the case may, duly executed by or on behalf of the party for whom he appears."*

42. It is seen from the above that the contents of the affidavit referred to in Delhi High Court Rules relied upon by Mr. Khosla, Ld. Counsel for the CD, the same are applicable to the deponent other than the plaintiff/ applicant. In the present case, Mr. Basu could swear the affidavit in the capacity of the Applicant/ Petitioner only. Only the details of the deponent other than Plaintiff need to be such as indicated in the rules, for the reasons that his particulars are not supposed to be available in the record. As far as the person who is authorized by the Plaintiff/ Applicant to institute the proceedings and who act as Applicant, his details are there in the proceedings, thus mere

omission to mention his extensive details in the affidavit would not vitiate the same.

42.1 As far as swearing of affidavit is concerned, as can be seen from Article 25-28 of the Constitution, every citizen of this country has freedom to practice religion of his choice. Article 25-28 of the Constitution reads thus:

> ***"25. Freedom of conscience and free profession, practice and propagation of religion.***
>
> *(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.*
>
> *(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law— (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.*
>
> *Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.*
>
> *Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.*
>
> ***26. Freedom to manage religious affairs-***
>
> *Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—*
>
> *(a) to establish and maintain institutions for religious and charitable purposes;*
>
> *(b) to manage its own affairs in matters of religion;*
>
> *(c) to own and acquire movable and immovable property; and*
>
> *(d) to administer such property in accordance with law.*
>
> ***27. Freedom as to payment of taxes for promotion of any particular religion****- No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.*

28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions-

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto."

42.2 Further, the Preamble to the Constitution of India declares that India has been constituted into a sovereign, socialist, secular, democratic republic. The Hon'ble Supreme Court in *Re: Berubari Union (I)* [1960 SCC OnLine SC 23] had held that the declaration made by the people of India in exercise of their sovereign will in the preamble to the Constitution is, "a key to open the mind of the makers" which may show the general purposes for which they made the several provisions in the Constitution. Thus, the expression 'secular' in the preamble emphasizes the objective for which Articles 25-28 of the Constitution were enacted i.e., to constitute the independent India into a secular country where the citizens would have the freedom to practice religion of his choice.

42.3 On this issue, we have also perused the Background Paper titled 'Oaths of Allegiance and the Canadian House of Commons' bearing no. BP-241E, authored by Michael Bedard and James R. Robertson, which was placed on record by the Ld. Counsel for the CD. The Ld. Counsel for the CD placed reliance on this paper, particularly on page 4 and 5, wherein the consequence

of omission in taking oath by a member of House of Commons was discussed. After perusal of the same, we see that the same deals with the issue of taking of an oath by an atheist and that certain objections were raised in the British Parliament that neither an oath by an atheist could be allowed to be taken nor an affirmation could be allowed in lieu of an oath. We further note that eventually in 1888, the law was changed so as to enable anyone to make an affirmation in lieu of an oath. In this regard, we note that cases pertaining to oaths and affirmations by a legislator of a foreign country are not applicable to the facts of the present case where the deponent has signed an affidavit on behalf of a body corporate in relation to a legal proceeding.

42.4 Furthermore, it is also relevant to refer to Rule 16 of Chapter 12- "Oaths, Affirmations and Affidavits" of the Delhi High Court Rules which provides the freedom to a deponent qua an affidavit to swear an oath or to affirm before the court, magistrate or other officers appointed in this behalf. Relevant excerpt of Rule 16 reads thus: -

> *"**16. Manner of administering oath to deponent—**In administering an oath or affirmation to the declarant in the case of any affidavit under the Code of Civil Procedure, the Court, Magistrate or other officer appointed in that behalf shall be guided by the rules under the Indian Oaths Act, 1873, printed in Part A of this Chapter and shall follow the form of verification by oath or affirmation hereto appended.*
>
> *I—Form of Verification of Oath or Affirmation*
>
> *(Vide Paragraph 15 Above)*
>
> *Oath*
>
> *I solemnly swear that this my delcaration is true, that it conceals nothing, and that no part of it is false—so help me God !*
>
> *Affirmation*
>
> *I solemnly affirm that this my declaration is true, that it conceals nothing, and that no part of it is false."*

42.5 Thus, the conclusion derived after considering the plea made on behalf of the Ld. Counsel for the CD as well as the constitutional articles pertaining to freedom of religion is that it is a person's choice to choose the manner in which he prefers to take oath. Except in the matters relating to their respective personal laws, any objection to the affidavit filed by a person on ground that the oath/affirmation given by such person does not conform to his religion cannot be entertained. The material adduced by Mr. Khosla before this Tribunal just indicate the method and manner adopted by the people practicing different religions to take oath.

43. It is also contended on behalf of the CD that there is no proper authorization in favour of Mr. Basu, who has signed the affidavit. As can be seen from the compilation of documents produced by Mr. Khosla himself, the debenture trustee has authorized Mr. Rejoy Basu to sign and submit the applications/ plaints/ petitions/ counter-claims or documents required to be filed in courts/ NCLT or any other authorities on its behalf. The authorization available on record at page 886 (Exhibit 31 of the paperbook) reads thus:

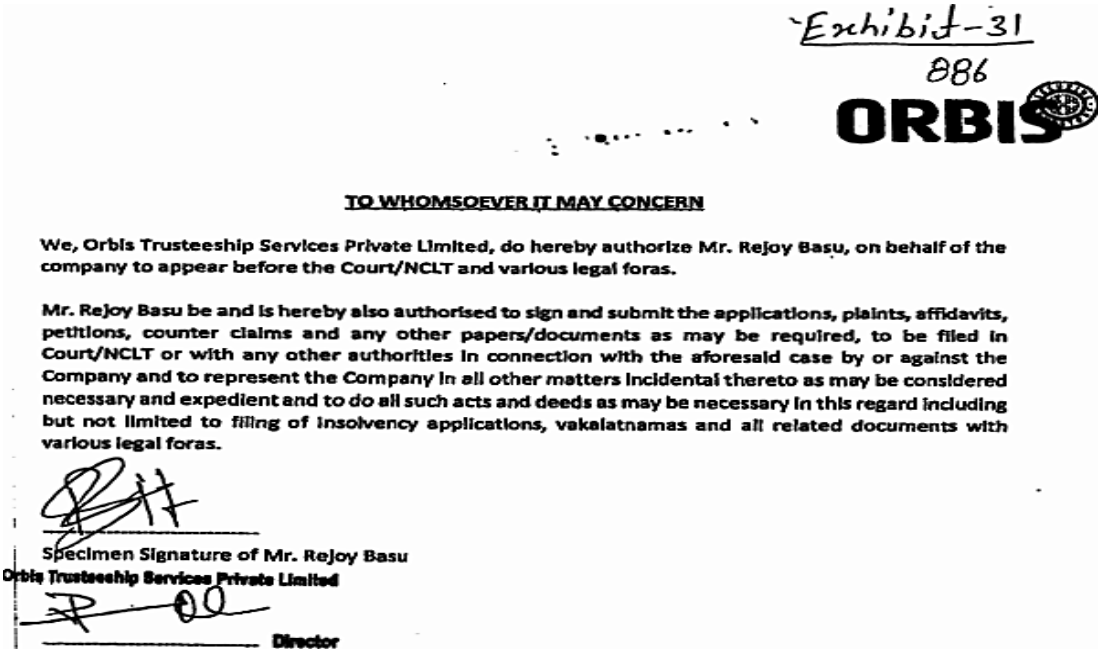

Exhibit-31
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ORBIS

TO WHOMSOEVER IT MAY CONCERN

We, Orbis Trusteeship Services Private Limited, do hereby authorize Mr. Rejoy Basu, on behalf of the company to appear before the Court/NCLT and various legal foras.

Mr. Rejoy Basu be and is hereby also authorised to sign and submit the applications, plaints, affidavits, petitions, counter claims and any other papers/documents as may be required, to be filed in Court/NCLT or with any other authorities in connection with the aforesaid case by or against the Company and to represent the Company in all other matters incidental thereto as may be considered necessary and expedient and to do all such acts and deeds as may be necessary in this regard including but not limited to filing of insolvency applications, vakalatnamas and all related documents with various legal foras.

Specimen Signature of Mr. Rejoy Basu

Orbis Trusteeship Services Private Limited

Director

44. From the affidavit available on record at page 27 of the petition (page 22 of the compilation of documents produced on behalf of the Corporate Debtor) it is seen that Mr. Rejoy Basu is working as an executive at Orbis Trusteeship Services Private Limited. Thus, he is an officer in terms of the provisions of the Companies Act, 2013.

45. As far as the plea espoused by Mr. Khosla regarding filing of Application directly by Orbis Trusteeship Services Private Limited and not on behalf of debenture holder is concerned, a reference has already been made to Section 71 of the Companies Act, 2013 which amplify the role of debenture trustee. Nevertheless, it can also be seen from the contents of the application that at page 8 and also Part IV of the application, it has been amplified that the debenture trustee is acting for the benefit and on behalf of debenture holders. Relevant excerpts of the application read thus: -

> *"Madam/ Sir,*
> *Orbis Trusteeship Services Private Limited (acting for the benefit of the Debenture Holders, i.e. Asia Pragati Strategic Investment Fund), hereby submits this application to initiate a corporate insolvency resolution process in the matter of Nobal Buidtech Private Limited, being the corporate guarantor for secured financial debt advanced to Kindle Infraheights Pvt. Ltd. The Applicant is the Debenture Trustee and acts on behalf of and for the benefit of the Debenture Holder, Asia Pragati Strategic Investment Fund."*

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PART-IV

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	The Applicant, a Debenture Trustee (acting for the benefit and on behalf of the Debenture Holders Asia Pragati Strategic Investment Fund), had extended a secured debt and facility to Kindle Infraheights Private Limited (hereinafter referred to as the **"Principal Borrower"**) by subscribing to secured, unlisted, redeemable, freely transferable, non-convertible debentures (hereinafter referred to as **"NCDs"**) of the below-listed values:—

		1. 13000 [Thirteen Thousand] NCDs of a face value of INR 1,00,000 [Indian Rupees One Lakh only] each, aggregating to **INR 130,00,00,000** [Indian Rupees One Hundred and Thirty Crores only] on July 1, 2019 (under Debenture Trust Deed dated June 27, 2019 as amended by the Amended and Restated Debenture Trust Deed dated September 30, 2020 and related transaction/security documents); and 2. 600 [Six Hundred] NCDs of a face value of INR 1,00,000 [Indian Rupees One Lakh only] each, aggregating to **INR 6,00,00,000** [Indian Rupees Six Crores only] on March 9, 2021 (under Debenture Trust Deed dated February 25, 2021 and related transaction/security documents). Therefore, there has been a total disbursement of INR **136,00,00,000** [Indian Rupees One Hundred and Thirty Six Crores only], of which INR 130,00,00,000 [Indian Rupees One Hundred and Thirty Crores only] was disbursed on July 1, 2019, and INR 6,00,00,000 [Indian Rupees Six Crores only] was disbursed on 9 March 2021; and which outstanding dues, over time and with applicable interest under the Amended and Restated Debenture Trust Deed dated September 30, 2020 and Debenture Trust Deed dated February 25, 2021 (referred to as the **"Debenture Trust Deeds"**), stands at Rs. 255,07,26,925/- as due and payable on 2 February 2022 plus further applicable interest from 2 February 2022 till actual date of payment. The repayment of the debts of the Principal Borrower, under the Debenture Trust Deeds have been jointly, severally, irrevocably and unconditionally guaranteed by Nobal Buildtech Private Limited (Corporate Guarantor), corporate debtor herein, along with other corporate guarantors vide Corporate Guarantee dated June 28, 2019 (further amended and restated vide Amended and Restated Corporate Guarantee October 01, 2020) and by Corporate Guarantee dated February 25, 2021 (hereinafter collectively referred to as **"Corporate Guarantees"**). The respondent, against discharge of the said debts, has also submitted security, including mortgage and hypothecation, as more fully set out later in this application.

		➢ Copies of the Amended and Restated Debenture Trust Deed dated September 30, 2020 and the Debenture Trust Deed dated June 27, 2019 executed between the Applicant and the Principal Borrower, corporate guarantors (including the Respondent herein) and personal guarantors are annexed hereto and marked as **Exhibit-1** and **Exhibit-2 respectively**. ➢ A copy of the Debenture Trust Deed dated February 25, 2021 executed between the Applicant and the Principal Borrower, corporate guarantors (including the Respondent herein) and personal guarantors is annexed hereto and marked as **Exhibit- 3**. ➢ Copies of the Corporate Guarantee dated June 28, 2019 and the Amended and Restated Corporate Guarantee dated October 01, 2020 are annexed hereto and marked as **Exhibit-4** and **Exhibit -5 respectively**. ➢ A copy of the Corporate Guarantee dated February 25, 2021 is annexed hereto and marked as **Exhibit -6.**

46. After dealing with the aforementioned pleas raised on behalf of the Ld. Counsels for both the parties, this Tribunal is to see whether the financial facility in the facts of the present case constitutes a financial debt for the purposes of Section 5(8) of the Code. This issue has already been answered in the affirmative in the order dated 11.09.2024 passed by this court in IB-541/ND/2022. At the cost of repetition, the relevant excerpt of the said order is reproduced herein below: -

> *"**19.** To keep the legal process straight, we may make a reference to provisions of Section 5(8)(c) of IBC, 2016 which provides that any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument would constitute financial debt. The Clause reads thus:-*
>
> *"5. Definitions.—*
>
> *.....*

(8) financial debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes— ….. (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;"

***20**. The Section 5(8) provides that the financial debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money. We find that in the present case, the trust deed provided for interest payable on the amount of consideration of non-convertible debentures.*

***21.** Here it would not be out of context to mention that there are multiple financial transactions between the Debenture Holders and the Corporate Debtor and anything observed by us hereinabove would not reflect on the exact amount of NCD. What we are concerned about in the present proceedings is the threshold limit of amount of default which is mentioned at Rs. 1 crore in Section 4 of IBC, 2016 […]"*

47. Further, in terms of the provision of Section 7(5) of IBC, 2016, while considering the application for admission, this Tribunal would satisfy itself as to whether the default has occurred, the application is complete and that no legal proceedings are pending against the proposed Resolution Professional. Section 7(5) of the Code reads thus: -

"7. Initiation of corporate insolvency resolution process by financial creditor.

[…]

(5) Where the Adjudicating Authority is satisfied that – (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application;

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the

applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority."

In the present case, the Respondent has not disputed the debt and the default in repayment of the same. Indubitably, the financial facility was extended and there is default in redemption of the debentures.

48. In Part- III of the application, the Applicant has proposed the name of Mr. Hemant Sethi to act as the Interim Resolution Professional. Relevant excerpt of the same reads thus: -

PART-III

PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL		
1.	NAME, ADDRESS, E-MAIL ADDRESS AND THE REGISTRATION NUMBER OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL	Mr. Hemant Sethi, Insolvency Professional, Business Address: AAA Insolvency Professionals LLP, E-10A, Lower Ground Floor, Kailash Colony, New Delhi, Pin-110048 Permanent Address: Block-IB, House No. 8C, Opposite Sports Complex, Ashok Vihar, Phase-1, New Delhi- 110052. Email: hemantmlsethi60@gmail.com Mobile: 9899703132 Business Phone (Landline): 011-46664600 Registration number: IBBI/IPA-002/IP-N01107/2021-2022/13628

49. It is also pertinent to mention that the aforementioned proposed IRP has submitted a declaration under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by way of Form 2 to indicate that no legal proceedings are pending against him. The relevant excerpt of the same reads thus: -

(iv) Certify that there are no disciplinary proceedings pending against me with the Board or Indian Institute of Insolvency Professionals of ICSI;

(v) affirm that I am eligible to be appointed as a resolution professional in respect of the corporate debtor i.e. NOBAL BUILDTECH PRIVATE LIMITED in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

(vi) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016;

50. In the facts and circumstances of the case, as noted above we are left with no option but to admit the present application. Ordered accordingly**.**

51. In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD and as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

(a) The institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent.

52. As proposed by the Petitioner, Mr. Hemant Sethi, having Registration No. IBBI/IPA-002/IP-01107/2021-2022/13628, is hereby appointed as IRP. It is further ordered that Mr. Hemant Sethi, shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.

53. The Petitioner is directed to deposit Rs. 2,00,000/- with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

54. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

55. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for its record.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)